



The Florida Senate

Interim Report 2010-106

October 2009

Committee on Community Affairs

INTERNET NOTICE

Issue Description

As more people turn to the internet for news,¹ policy-makers across the country have been considering publishing public notices and legal advertisements on government websites as a cost-saving measure. In 2009, the Florida Legislature passed CS/SB 2188, 2nd Eng., requiring state agencies to provide internet notice for purposes of Chapter 120, F.S. SB 2292 also proposed to allow other local governmental entities to publish notice on the internet in a wide variety of situations.

The purpose of this interim report is to evaluate the ramifications of changing the publication of public notices and legal advertisements from newspapers to the internet. To guide this analysis, committee staff collected information about the current costs of publishing public notices and legal advertisements and the demographic information associated with internet usage. Using this information, the report emphasizes factors that the Legislature should consider when making the transition from newspapers to the internet and provides suggestions on how to gain some of the cost saving benefits of internet notice without decreasing public participation in local government.

Background

Local Government Public Notices

Local governments are the governments closest to the people. They are viewed as the government where individuals can have the greatest impact on the policies of their community. A critical part of participatory democracy is that citizens know of and even participate in government. It is for this reason that Florida has such strong Sunshine Laws granting citizens access to public records and meetings of government officials.

A range of other statutes require local governments to publish in local newspapers notice of a range of topics of interest to local residents and businesses. Such notices include:

- **Government business with the private sector:**
 - The purchase of certain goods or services using a competitive bidding process, ss. 125.012, 153.79, 157.03, 157.21, 157.28, 159.32, 180.24, 190.033, and 255.0525, F.S.
 - The sale of government property, ss. 125.35, 163.380, 274.06, and F.S.
- **Government formulation of public policy:**
 - Notice of special election or referendum, s. 100.342, F.S.
 - The enactment of an ordinance or a resolution, ss. 125.66, 163.511, 165.051, 163.514, 170.05, and 180.09, F.S.
 - Budgeting, special assessments, and the funding information for the State Housing Initiatives Partnership program, ss. 129.03, 129.06, 163.356, 163.361, 163.387, 170.07, 373.4592, 373.45924, 373.536, and 420.9075, F.S.
 - County commission meetings, s. 138.12, F.S.

¹ See Pew Internet & American Life Project, *Online News: For many home broadband users, the internet is a primary news source*, Mar. 22, 2006, available at http://www.pewinternet.org/~media/Files/Reports/2006/PIP_News.and.Broadband.pdf.pdf.

- The creation, modification, deactivation, and meeting schedules for designated districts, ss. 153.53, 153.55, 163.516, 163.524, 166.0497, 189.4044, 189.417, 190.006, and 298.301, F.S.
 - Certain types of land use changes and developments of regional impact, ss. 163.3184, 163.3225, 163.360, and 380.06, F.S.
 - Merger, dissolution, annexation, or contraction of municipalities, ss. 165.041, 165.051, 171.0413, and 171.051, F.S.
 - Certain property tax information, ss. 192.0105, 194.037, 197.3632, and 200.065, F.S.
 - Business taxes, ss. 205.032 and 205.042, F.S.
 - Public hearings for highway projects by certain transit authorities, ss. 348.243, 348.83, 348.943, 348.953, and 348.968, F.S.
 - Hearings to plan a process to allow certain projects to get expedited permitting, s. 403.973, F.S.
- **General information for citizens:**
 - Court ordered sale of property, s. 173.09, F.S.
 - Vacation and annulment of plats subdividing land, s. 177.101, F.S.
 - Hearings where the government proposes to provide the local communications service, s. 350.81, F.S.
 - Hearings that designate certain brownfield areas, s. 376.80, F.S.
 - Restricted fishing areas, s. 379.2425, F.S.
 - Local amendments to the Florida Building Code of fire safety standards, s. 553.73 and 633.025, F.S.
 - Disposal of abandoned or lost property, ss. 705.103 and 715.109, F.S.
 - Supplementary notification of a code violation, s. 162.12, F.S.

These legal notices and public advertisements must, by statute, be published in a newspaper that has been in existence for one year² and is:

published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing 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.³

Proof of publication is made by uniform affidavit.⁴

Large Display Ads and Public Notices

Certain types of public notices must be displayed more conspicuously than others. Sections 125.66(4)(b)2., and 166.041(3)(c)2.b., F.S., require larger ads that are not published in the legal advertisement section for local government hearings where changes to zoning and land uses are being enacted. These notices must include a map which clearly indicates the area covered by the proposed ordinance. Under ss. 171.0413 and 171.051, F.S., proposed annexations and contractions, respectively, must also include maps of the affected areas. Under s. 380.06(25), F.S., hearings regarding proposed developments of regional impact must be of specified size and not published in the section for legal notices and classified advertisements. For a local government's expedited permitting process to be "duly noticed" pursuant to s. 403.973, F.S., it must be one-eighth of a page in size and must be published in a portion of the paper other than the legal notices section.

Section 194.037, F.S., requires that the tax impacts of the value adjustment board shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear and specifies the layout of the notice. Section 200.065, F.S., requires that hearings by local governments to fix the millage rate must be at least a

² Section 50.031, F.S.

³ Section 50.011, F.S.

⁴ Section 50.031, F.S.

quarter page, shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear, and must follow a statutorily defined structure. According to s. 373.45924, F.S., whenever the South Florida Water Management District proposes to borrow or to otherwise finance with debt any capital outlay projects, the District must publish a statement of its proposal to borrow money in a newspaper having a combined general circulation in the counties having land in the district. The notice must be at least 6 inches square in size and shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

Notices of public hearings where brownfield areas are designated, pursuant to s. 376.80(2), F.S., must be made in a newspaper of general circulation in the area and the notice must be at least 16 square inches in size, must be in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing.

Newspapers' Role in Public Notice

Newspapers have been the traditional source of news for U.S. citizens since the beginning of our nation's history. In fact, newspapers have traditionally played a strong role in government accountability and accessibility.⁵ Public notices and legal advertisements have traditionally been published in newspapers.

According to a 2007 study commissioned by the Florida Press Association and conducted by American Opinion Research, more than eighty percent of Floridians surveyed read a newspaper at least once a week.⁶ Approximately sixty percent of Floridians surveyed had seen public notices in newspapers.⁷ Citizens who read newspapers for news may also be exposed to the information in public notices and legal advertisements without having to seek it out. Sixty-four percent of Floridian's surveyed stated that they would read public notices less often if they were eliminated from the newspaper and published on government websites.⁸

One of the reasons for not posting public notices or legal advertisements on the internet is that newspapers are generally accessible to both the reading public and the government.⁹ Newspapers have a relatively inexpensive distribution mechanism with documented subscribership.¹⁰ Newspapers provide a relatively stable format for evidence and records. By contrast websites can be difficult to find or navigate. Websites can also be changed at will without an archiving process in place.

The Internet as a Forum for Public Notice

In 2009, Florida, Maine, New York, Pennsylvania, Rhode Island, South Carolina, Utah, and Virginia all considered bills to allow certain public notices or legal advertisements to be posted on the internet instead of in the newspaper. Utah, which already has a website designated for public meeting notices,¹¹ passed a bill allowing legal notices to be posted on the state public notice website.¹² In 2009, the Florida Legislature passed CS/SB 2188, 2nd Eng., requiring state agencies to provide internet notice.

Internet access is often available in public schools and libraries. However, the costs of internet access and computer ownership are not insubstantial. It is important to consider the demographic information currently available regarding internet access and usage because for many forms of public notice, it is important to include as many citizens of the relevant jurisdiction as possible.

⁵ See, e.g., Sandra F. Chance & Christina Locke, *The Government-in-the-Sunshine Law Then and Now: A Model for Implementing New Technologies Consistent with Florida's Position as a Leader in Open Government*, 35 FLA. ST. U. L. REV. 245, 251-53 (2008) (referencing the role of newspapers in the evolution of Florida's Sunshine laws).

⁶ American Opinion Research, *Advertising & Media Use in Florida; a Study for the Florida Press Association*, April 2007.

⁷ *Id.*

⁸ *Id.*

⁹ Shannon Martin, *States Begin to Permit Web Posting for Legal Ads, Public Notices*, NEWSPAPER RESEARCH JOURNAL, Fall 2003.

¹⁰ *Id.*

¹¹ Utah Public Meeting Notices available at <http://www.utah.gov/pmn/index.html>.

¹² SB 208, Gen. Sess. (Ut. 2009).

In 2007, a survey by the U.S. Census estimated that 62.4% of U.S. citizens and 62.1% of Floridians had internet access from some location.¹³ A 2009 study by the PEW Internet and American Life Project estimates that 74% of all adults go online while 59% go online to visit government websites.¹⁴

REPORTED INTERNET USAGE FOR INDIVIDUALS 3 YEARS AND OLDER, BY SELECTED CHARACTERISTICS: 2007 (IN THOUSANDS)					
Selected Characteristics		Individual accesses the Internet from some location ¹		Individual lives in household with Internet access	
	Total	Number	Percent	Number	Percent
	285,410	177,987	62.4	191,520	67.1
Age					
3-17 years	61,964	34,898	56.3	43,835	70.7
18-34 years	68,141	49,388	72.5	46,568	68.3
35-44 years	42,276	30,758	72.8	31,057	73.5
45-64 years	73,829	49,245	66.7	52,145	70.6
65 years and older	39,200	13,697	34.9	17,914	45.7
Race and Hispanic origin					
White alone	229,043	146,787	64.1	158,291	69.1
White non-Hispanic alone	189,312	130,432	68.9	139,553	73.7
Black alone	35,589	17,812	50.0	18,118	50.9
Asian alone	20,778	13,387	64.4	15,111	72.7
Hispanic (of any race)	42,716	17,760	41.6	20,328	47.6
Gender					
Male	139,603	86,737	62.1	94,855	67.9
Female	145,806	91,250	62.6	96,665	66.3
Total 15 years and older	236,870	153,956	65.0	157,915	66.7
Employment status					
Employed	147,580	109,150	74.0	108,217	73.3
Unemployed	6,984	4,583	65.6	4,300	61.6
Not in labor force	82,306	40,223	48.9	45,399	55.2

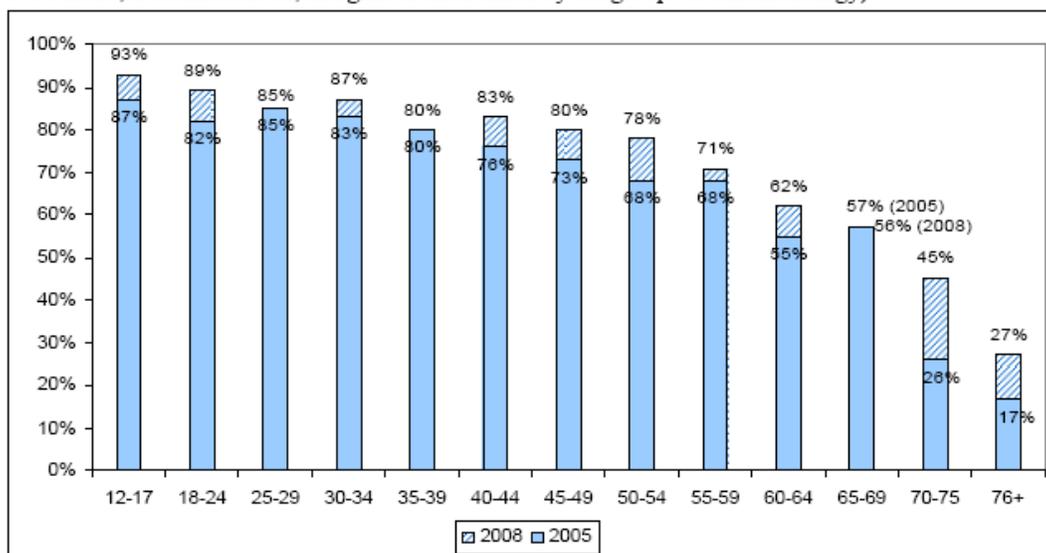
¹³ *Id.*

¹⁴ PEW Internet & American Life Project, Generations Online in 2009, Jan. 28, 2009, available at <http://www.pewinternet.org/Reports/2009/Generations-Online-in-2009.aspx>.

Total 25 years and older	195,235	122,162	62.6	128,056	65.6
Educational attainment					
Less than high school graduate	25,617	4,757	18.6	7,741	30.2
High school graduate	61,471	30,363	49.4	34,055	55.4
Some college or associate's degree	50,873	37,428	73.6	37,073	72.9
Bachelor's degree or higher degree	57,274	49,614	86.6	49,188	85.9
Source: U.S. Census Bureau, Current Population Survey, November 2007.	Internet Release date: June 2009				
¹ "Some location" means Internet access that occurs either inside or outside the householder's home. ¹⁵					

The chart below describes how online demographics have changed by age between 2005 and 2008.

Chart: Percentage of Americans online by age (Teens, 12-17, Nov. 2007-Feb. 2008, margin of error = ±3%. Adults, December 2008, margins of error differ by subgroup. See methodology).



¹⁵ U.S. Census Bureau, Computer and Internet Use in the United States: October 2007, available at <http://www.census.gov/population/www/socdemo/computer/2007.html>.

¹⁶ *Id.*

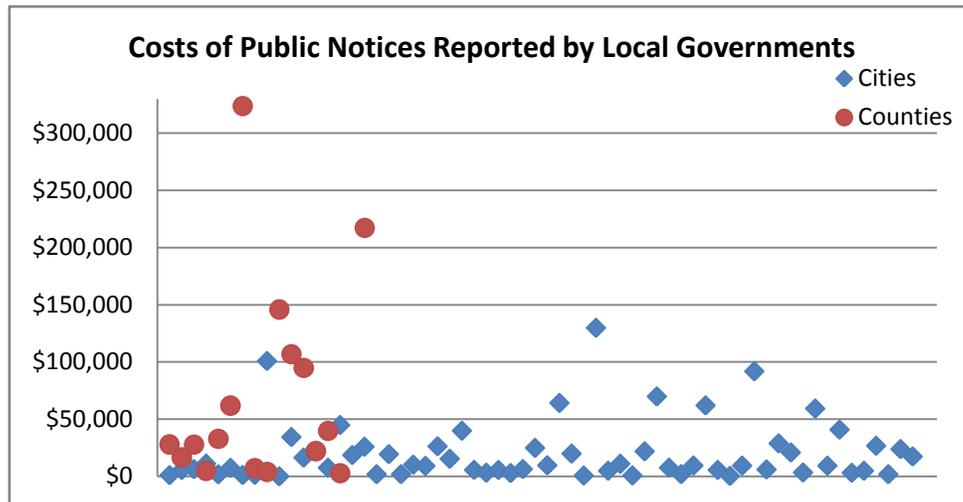
Findings and/or Conclusions

The Senate Committee on Community Affairs surveyed city and county governments throughout Florida as well as several Florida newspapers to assess the cost to local governments of using newspapers to publish public notices and legal advertisements. Many of the responses received from local governments were from subsections of the local government, such as the board of county commissioners or the school system and did not reflect the costs for the local government as a whole. A total of 62 municipalities and 15 counties responded to the survey’s questions about the cost of publishing public notices and legal advertisements. However, 192 partial responses were received from local governments. According to the Legislative Committee on Intergovernmental Relations, which conducts these surveys on a regular basis, this was a particularly high response rate. The high response rate suggests that this issue is of interest to many local governments. The committee also received survey responses from 18 Florida newspapers of varying size and readership.

Cost Data

Local Governments

Publication costs for public notices and legal advertisements ranged considerably with the City of Center Hill reporting an annual cost of \$150 and the Miami City Clerk’s Office reporting the annual cost was \$130,000. Wakulla County reported an annual cost of \$3,000, while Orange County reported costs of more than \$323,681. The County of Miami-Dade, not shown on the chart below, spent \$1,124,664 on newspaper notices. The median cost of newspaper publications reported by municipalities was \$9,550 and the average cost was \$20,222. Costs reported by the counties had a median of \$32,900 and an average of \$133,096. The cost distribution is shown in the chart below.



Newspapers

The income stream received by newspapers for publication of public notices and legal advertisements is often much higher than the costs paid by an individual local government. Many of the newspapers surveyed serve multiple jurisdictions. The median income reported from newspapers for public notices and legal advertisements was \$108,704 with an average cost of \$173,219. Newspapers, which have served an important role in maintaining the accountability of public entities, will suffer a further decline in revenues due to the transition from newspaper publication of public notices and legal advertisements to internet publication.

Qualitative Information

Most of the newspapers surveyed also publish public notices and legal advertisements on the web. Some charge an additional cost. Most, but not all, local governments that responded to the survey already have a local government website. Most local governments estimated that the cost of transitioning from newspaper to internet notice would be negligible. The majority of local governments that responded would continue to publish at least

some types of public notices or legal advertisements in the newspapers even if they were no longer required to by statute.

IF PUBLICATION IN LOCAL NEWSPAPERS BECAME OPTIONAL, WOULD YOUR LOCAL GOVERNMENT CONTINUE TO PUBLISH LEGALLY REQUIRED ADVERTISEMENTS AND PUBLIC NOTICES IN LOCAL NEWSPAPERS?		
Response	Number of local governments responding	Most common explanation for response
Yes, the local government would continue to publish in local newspapers.	17	Concern that residents do not have computers and/or web access or that the local government does not yet have a website.
No, the local government would not continue to publish in local newspapers.	30	Cost savings.
The local government would discontinue some forms of advertisements and notices but continue others.	31	The advertisements and notices that local governments would continue to publish in the paper varied widely; the most consistent response is that most local governments would continue to publish elections.
The local government did not know how they would respond.	7	It will be a political decision guided by the legal framework the legislature puts in place.

The forms of public notices or legal advertisements most often published by local governments include (in order from most cited by local governments to least cited): ordinances, comprehensive plan/land use changes, public hearings/meetings, bid notices and job advertisements, elections, and budget information.

Options and/or Recommendations

If the Legislature chooses to transition some notices currently published in local newspapers to the internet, the Legislature should consider:

- Whether the notices should be published on local government websites or on a centralized state website.
- If alternate notice requirements must be established so that citizens without internet access can participate in the governing process.
- What will constitute proof of publication on a government website when proof of publication is required.
- Whether there should be statutory requirements for the accessibility and maintenance of government notice websites; it is important that these websites be up, running, and easy for the public to navigate.
- What archiving procedures need to be put in place to ensure that a stable record of published notices and legal advertisements is maintained by each local government.
- Whether local governments will be required to maintain a website.
- How local governments will apprise their citizens of the transition from newspaper notice to internet notice.
- How local governments will be held accountable for properly publishing public notices and legally required advertisements; without newspapers having a profit motive for ensuring that notices are properly published, there should be some way for citizens to ensure that they have timely access to the information they need.

The internet is a valuable tool that can provide cost savings for local governments. Some forms of public notices and some legal advertisements could be transitioned from the newspaper to the internet without threatening public

participation in local government or undermining the availability of important information. However, other public notices directly impact how informed the public is about the actions of their local government.

One option the Legislature might consider would be to transition to using the internet for those public notices and legal advertisements that have less of an impact on public participation in the political process. Government business with the private sector, the solicitation of bids and the sale of government property, could likely be placed on the internet without substantial concern that the information would not be received by those who need it. Businesses engaged in these activities are likely sophisticated enough to be able to access the internet for business purposes and the profit motive provides an incentive for the businesses to seek out the information on the government website. However, the Legislature may choose to encourage local governments to make sure that small and minority owned businesses are able to make the transition.

As a cost saving measure, the Legislature may want to consider allowing local governments to reduce large newspaper notices that include maps, etc. by making reference to the local government website where additional information can be found. By eliminating maps in newspaper advertisements, it may not be immediately obvious to citizens whether they reside in the affected demographic. Nevertheless, making reference to the maps in the newspaper would provide more notice to the public than eliminating the newspaper notice entirely.

The Legislature may want to consider making a slower transition from the internet to the newspaper for notices involving the political process. If these notices are published on the local government's website, citizens will be required to seek out this information on that website rather than finding it presented along with general news items in the local newspaper. In addition, the transition may leave certain demographics at an informational disadvantage; specifically, African Americans, Hispanics, and the elderly have less access to the internet than other groups according to the 2007 U.S. Census study.¹⁷

The Legislature may also want to consider having a transition period where notices are available both on the internet and on the government website. The transition period would: (1) give the local governments time to develop accessible and reliable websites for public notices; (2) give local governments time to develop an archiving system; (3) give citizens time to become aware of and adjust to the website; and, (4) if the trend over the last few years continues, allow more citizens, particularly the elderly, to adapt to using the internet for this type of information.

The internet can provide information to citizens and cost savings to local governments. The local newspaper is a time honored institution where citizens have traditionally gone to find news, public notices, and legal advertisements. The Florida Legislature may transition from publishing certain public notices and legal advertisements in newspapers, but the transition should be thoughtfully done so that citizens, particularly certain minorities and the elderly, are able to access the information they need to participate in the governing process.

¹⁷ U.S. Census Bureau, Computer and Internet Use in the United States: October 2007, *available at* <http://www.census.gov/population/www/socdemo/computer/2007.html>.