

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 402

INTRODUCER: Senator Rodrigues

SUBJECT: Public Notice and Voting Rights Restoration Database

DATE: January 22, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 402 proposes a process to identify amounts owed for fines, fees, and restitution by non-violent ex-felons to help them determine whether their voting rights have been restored in accordance with Amendment 4. Any remaining balances owed will be published on a website operated by the Supreme Court. The website will receive funding from fees collected from legal notices published through a statewide website.

The bill allows for legal notices to be published through a statewide website established and maintained by the Supreme Court in lieu of publication in a newspaper. The cost to publish a legal notice may not exceed \$500, unless the Supreme Court adjusts this fee with the approval of the Legislative Budget Commission.

The bill allows for either of these websites to be operated by the Supreme Court, the Office of State Courts Administrator, or a contractor selected the Court.

A county may publish a legal notice in a newspaper of general circulation within that county, but the newspaper may not charge a fee in excess of the website publication fee established by the Supreme Court.

The bill requires the Office of State Courts Administrator, on a monthly basis, to:

- Publish the existence of the legal notice website, along with its web address, in at least one newspaper of general circulation in each county of the state;
- Direct each county to post a clear written notice of the legal notices website at the entrance of each county courthouse and each annex containing court facilities;
- Direct each clerk of court to include a notice of the legal notices website on its official website; and
- Direct each judicial circuit to include a notice of the legal notices website on its official website.

The bill is effective July 1, 2021.

## II. Present Situation:

The Florida Constitution requires that certain meetings between public officials be “open and noticed to the public.”<sup>1</sup> Generally, this requirement applies to meetings where official acts will be taken, or where public business will be transacted or discussed.

Similarly, procedural due process requires that a citizen receive proper notice of any government action that may affect his or her life, liberty, or property. The purpose of this notice is “to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”<sup>2</sup> and “must be of such nature as reasonably to convey the required information.”<sup>3</sup>

Historically, notice can be established by service of process by personally and directly delivering the notice to the interested party.<sup>4</sup> Issues may arise, for example, when an interested party is difficult to locate or when someone is purposefully avoiding service.<sup>5</sup> Likewise, some government actions such as public meetings affect so many interested individuals that it becomes implausible to individually notice each interested individual. To balance these interests, the Legislature has provided options to satisfy notice requirements for both litigation purposes as well as notices of public meetings and actions.

### Statutory Notice Requirements

Florida law requires that all legal notices and publications, including those made in lieu of service of process, be made in a newspaper that:

- Is printed and published at least once a week;
- Contains at least 25 percent of its words in the English language;
- Is considered a periodical by the post office in the county where it is published;
- Is for sale to the public generally;
- Customarily contains information of public interest to the residents or property owners in the county where it is published or is of interest or of value to the general public;<sup>6</sup> and
- Has been in existence for at least 1 year at the time the notice is published.<sup>7</sup>

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<sup>1</sup> Art. I, s. 24(b), Fla. Const.

<sup>2</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

<sup>3</sup> *Id.*

<sup>4</sup> “Personal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled.” *Greene v. Lindsey*, 456 U.S. 444, 449 (1982).

<sup>5</sup> “Where person to be served with process flees from presence of process server in a deliberate attempt to avoid service of process, the delivery requirement may be satisfied if the process server leaves the papers at a place in which such person can easily retrieve them and takes reasonable steps to call such delivery to the attention of the person to be served.” *Olin Corp. v. Haney*, 245 So. 2d 669 (Fla. 4th DCA 1971). This only applies, however, to a service of process made at the individual’s “usual place of abode.” Section 48.031, F.S.

<sup>6</sup> Section 50.011, F.S.

<sup>7</sup> Section 50.031, F.S.

If no newspaper is published in the county, three copies of the notice or advertisement must be posted in the county, with one being posted at the front door of the courthouse, two others posted at other locations in the county, and by publication of the notice in the nearest county where a newspaper is published.<sup>8</sup>

A newspaper publishing any notice is also tasked with placing the notice on a statewide website established and maintained by the Florida Press Association.<sup>9</sup> This website must be accessible and searchable by party name and case number, and each notice must be posted for at least 90 days.<sup>10</sup> This provision of Florida law is similar to statewide legal notice websites established in Alabama,<sup>11</sup> Colorado,<sup>12</sup> Illinois,<sup>13</sup> Louisiana,<sup>14</sup> Maine,<sup>15</sup> Massachusetts,<sup>16</sup> North Dakota,<sup>17</sup> Ohio,<sup>18</sup> Tennessee,<sup>19</sup> Utah,<sup>20</sup> Virginia,<sup>21</sup> and Wisconsin.<sup>22</sup> The above states require that any notice published in a newspaper as set forth by law also be published in a statewide website maintained and operated by a private entity on behalf of the newspapers of that state, such as a union or trade group.

### *Newspaper Website*

Florida law further provides that if the newspaper publishing the notice maintains a website, the legal notice must be published on the website the same day that it appears in the newspaper at no additional charge.<sup>23</sup> The newspaper's website must contain a search function to facilitate searching for legal notices.<sup>24</sup> Registration cannot be a requirement, nor can a fee be charged, for searching or viewing legal notices on a newspaper's website if the legal notices are published in a newspaper.<sup>25</sup>

### *Fees*

The fees for a legal notice published in a newspaper are set by statute and may not be rebated, commissioned, or refunded. The charge for publishing a legal notice is set by statute at 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion. Notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. If the

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<sup>8</sup> Section 50.021, F.S.

<sup>9</sup> Section 50.021, F.S. The website established by the Florida Press Association, Florida Public Notices, is available at <https://www.floridapublicnotices.com/>.

<sup>10</sup> *Id.*

<sup>11</sup> Ala. Code § 6-8-62.

<sup>12</sup> Colo. Rev. Stat. Ann. § 24-70-103.

<sup>13</sup> 715 Ill. Comp. Stat. Ann. 5/2.1.

<sup>14</sup> La. Stat. Ann. § 43:111E.

<sup>15</sup> Me. Rev. Stat. tit. 1, § 603(2).

<sup>16</sup> Mass. Gen. Laws Ann. ch. 4, § 13.

<sup>17</sup> N.D. Cent. Code Ann. § 46-05-09.

<sup>18</sup> Ohio Rev. Code Ann. § 125.182(a).

<sup>19</sup> Tenn. Code Ann. § 1-3-120(a)(2).

<sup>20</sup> Utah Code Ann. § 45-1-101(2)(b).

<sup>21</sup> Va. Code Ann. § 8.01-324(g).

<sup>22</sup> Wis. Stat. Ann. § 985.01(7).

<sup>23</sup> Section 50.0211(2), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

regular established minimum commercial rate per square inch is greater than the rate stipulated in statute, the publisher may charge the minimum commercial rate for each insertion, except that notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. All notices and legal advertisements are charged on the basis of 6-point type on 6-point body, unless otherwise specified by statute.<sup>26</sup>

Actual fees vary depending on the type of notice requested, the size of the notice, any subsequent insertions or publications, as well as which newspaper publicizes the notice. The Tampa Bay Times, for example, charges \$200 for a “full run” of a notice of a foreclosure action.<sup>27</sup> If the notice needs to be up for more than 2 days, the charge increases to \$400. Additionally, the per-line cost above the included 165 line limit is \$6.45.

### **Felony Fees and Fines**

In 2018, Amendment 4 to the Florida Constitution was approved by the voters of Florida. Prior to the amendment passing, individuals convicted of a felony were disqualified from voting unless their civil rights were restored.<sup>28</sup> The amendment provides for the automatic restoration of voting rights “upon completion of all terms of sentence including parole or probation.”<sup>29</sup> The amendment does not apply to those convicted of murder or a felony sexual offense.<sup>30</sup>

In 2019, SB 7066 was signed into law and further defined “completion of all terms of sentence.” Specifically, s. 98.0751, F.S., created by the bill, defined the phrase to require:

- Completion of all terms of imprisonment;
- Completion of any court ordered probation or community control;
- Termination any term of supervision monitored by the Florida Commission on Offender Review;
- Completion of any court ordered community service hours;
- Payment in full of any restitution ordered to a victim by the court as a part of a sentence;
- Fulfillment of any term ordered by the court as part of a sentence; and
- Payment in full of any fines or fees ordered by the court as a part of the sentenced or as part of any condition of supervision, including probation, community control, or parole.<sup>31</sup>

The local supervisor of elections must verify and make the final determination on whether an individual is eligible to vote based on his or her felony conviction and his or her completion of sentence.<sup>32</sup> To determine eligibility, the supervisor of elections may obtain information from the

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<sup>26</sup> Section 50.061, F.S.

<sup>27</sup> For the Tampa Bay Times, a “full run” includes all of Pinellas, Pasco, Hernando, Citrus, and Hillsborough counties. Opting for an individual run of a specific county costs \$135 for Pasco County, and \$155 for Hillsborough or Pinellas Counties. TAMPA BAY TIMES, *Certified Legal Rates*, <https://www.tampabay.com/resources/images/marketing/mediakit/pdf/Legal-Rate-Card.pdf> (Last visited January 21, 2021)

<sup>28</sup> Civil rights, including voting and firearm ownership rights, may be restored based on the approval of the Governor along with two members of the Florida Cabinet. Article IV Section 8(a)

<sup>29</sup> Art. VI, s. 4(a), FLA. CONST.

<sup>30</sup> Art. VI, s. 4(b), FLA. CONST. and s. 98.0751(1), F.S.

<sup>31</sup> Section 98.0751(a), F.S.

<sup>32</sup> Section 98.0751(3)(b), F.S.

Department of State, which verifies registered voters who have been convicted of a disqualifying felony based on records from a clerk of the circuit court, the Board of Executive Clemency, the Department of Corrections, the Department of Law Enforcement, or a United States Attorney's Office.<sup>33</sup> The supervisor of elections in several different counties, as well as the Department of State, have instructions on their websites for ex-felons to contact the clerk of the circuit court or the Department of Correction to determine if their sentences have been completed for the purposes of voting rights restoration.<sup>34</sup>

If the supervisor of elections determines that the individual is ineligible to register to vote, the supervisor must notify the applicant within 7 days after receiving information regarding the individual's ineligibility.<sup>35</sup> The registered voter may, within 30 days, challenge the ineligibility determination and request a hearing for the purpose of determining eligibility. Determinations of eligibility are based on a preponderance of evidence standard.<sup>36</sup> The final determination of eligibility may be appealed to the circuit court.<sup>37</sup>

If an individual is unsure of his or her eligibility to vote based on his or her inability to verify a completion of sentence, he or she may request an advisory opinion from the Department of State.<sup>38</sup> If the Department "finds no credible or reliable information to indicate that the felon is eligible to vote, the Division will issue an opinion stating that the felon is eligible."<sup>39</sup> In 2020, the Department issued 19 separate advisory opinions in response to specific individual requests to determine voter eligibility based on felony convictions and any costs, fees, fines, and restitution owed.<sup>40</sup>

### III. Effect of Proposed Changes:

#### Legal Notice Website

The bill provides an option for those required by law to publish legal notices to publish those notices on a website maintained by the Florida Supreme Court in lieu of a newspaper publication. Legal notice may be satisfied upon the notice being accessible during the period of time that notice was required. A court may find that the notice was not sufficient if the notice was not accessible during the period of time that the notice was required.

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<sup>33</sup> Section 98.075(5)

<sup>34</sup> Lori Scott, Supervisor of Elections, Brevard County, *Amendment 4: Registering to Vote*, <https://www.votebrevard.gov/Voter-Information/Restoration-of-Rights> (Last visited Jan. 21, 2021) and Sarasota County Supervisor of Elections, *Amendment 4 Fact Sheet*, <https://www.sarasotavotes.com/content.aspx?id=307> (Last visited Jan. 21, 2021) and Michael Bennett, Supervisor of Elections, Manatee County, *Restoration of Civil Rights*, <https://www.votemanatee.com/m/Voter-Information/Restoration-of-Civil-Rights> (Last visited Jan. 21, 2021).

<sup>35</sup> Section 98.075(7)(a)(1), F.S.

<sup>36</sup> Section 98.075(7)(b)(1), F.S.

<sup>37</sup> Section 98.0755, F.S.

<sup>38</sup> Section 106.23(2), F.S.

<sup>39</sup> Florida Department of State, *Constitutional Amendment 4/Felon Voting Right*, <https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights/> (Last visited Jan. 21, 2021).

<sup>40</sup> Florida Department of State, *Advisory Opinions By Year, 2020-Felon Opinions*, <https://dos.myflorida.com/elections/laws-rules/advisory-opinions/advisory-opinions-by-year/> (Last visited Jan. 21, 2021).

The website may be operated by the Office of the State Courts Administrator or by a contractor selected by the Court. The operating costs of the website may not exceed 15 percent of the revenue from fees for posting legal notices on the website.

The bill requires the Office of State Courts Administrator, on a monthly basis, to:

- Publish the existence of the website, along with its web address, on a monthly basis in at least one newspaper of general circulation in each county of the state;
- Direct each county to post a clear written notice of the legal notices website at the entrance of each county courthouse and each annex containing court facilities;
- Direct each clerk of court to include a notice of the website on its official website; and
- Direct each judicial circuit to include a notice of the legal notices website on its official website.

### **Fees**

The bill limits the fee charged to post a notice on the website to \$500, allowing for adjustment by the Supreme Court with the approval of the Legislative Budget Commission. This same fee limit, or an alternative if established by the Supreme Court, would apply to any legal notice that a county posts in a newspaper of general circulation in lieu of publishing the notice in the Supreme Court's legal notices website.

After taking into account the operating costs of the legal notices website, revenue from fees collected will be used to aggregate and collect data regarding restitution, fines, and fees owed by non-violent<sup>41</sup> ex-felons.<sup>42</sup>

Any excess revenue which remains after the operating costs of the website will be deposited into the Senate Courts Revenue Trust Fund. Fifteen percent of this excess revenue may be pledged toward the operation of the website created for the publication of legal notices.

The bill takes effect July 1, 2021.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>41</sup> The language of Amendment 4 allows restoration of voting rights upon completion of all terms of sentence with the exception of those convicted of murder or a felony sexual offense. The bill is narrower in that it would mandate only "non-violent" felony convictions to be included in the aggregated data on the website. While undefined in the bill, "non-violent" could seemingly exclude certain felony convictions based assault, battery, and certain weapons based offenses. Under the Violent Career Criminals law, for example, violent felonies include: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly or disabled person, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly or disabled person, aggravated manslaughter of a child, unlawful throwing, placing or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking. Section 775.084(1)(b)(1), F.S. The Legislature likely intends for the language of the bill to refer to the ex-felons identified in State Constitution who may have their voting rights restored.

<sup>42</sup> The bill includes the language "to victims and the judicial branch". Broadly, this would indicate payment of restitution to the victim, as well as court costs, fees, and fines owed to the judicial branch.

**B. Public Records/Open Meetings Issues:**

This bill does not make confidential the information relating to amounts owed by ex-felons. If the Legislature determines that information should be confidential and exempt from the disclosure requirements of the public records laws, it would need to address that issue in a separate bill.

**C. Trust Funds Restrictions:**

None.

**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.<sup>43</sup> For example, notice is required for termination of parent rights proceedings,<sup>44</sup> certain local county initiatives,<sup>45</sup> and civil judgements based on litigation.<sup>46</sup> 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.<sup>47</sup>

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

None.

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<sup>43</sup> 339 U.S. 306, 314 (1950).

<sup>44</sup> *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) .

<sup>45</sup> *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”).

<sup>46</sup> “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).

<sup>47</sup> For example, the courts have routinely upheld certified mail as a valid method of constructive notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (The Court found in dictum that mail “provide[s] an ‘efficient and inexpensive means of communication’ upon which prudent men will ordinarily rely in the conduct of important affairs”).

**B. Private Sector Impact:**

This bill will likely reduce revenue for newspapers to the extent that public officials and parties in litigation decide to use the Supreme Court's website in lieu of a newspaper for the publication of legal notices.

**C. Government Sector Impact:**

The bill may reduce government costs to publish legal notices.

According to the Office of the State Courts Administrator, it anticipates an increase in its workload in order to maintain the two websites described in the bill. Additionally, OSCA anticipates having to collaborate with the clerks of court to collect the relevant data. Complicating matters further is the fact that the "67 clerks of court currently do not have a statewide system for identifying legal financial obligations."

**VI. Technical Deficiencies:**

The Legislature may wish to revise the bill to provide more detail regarding how data regarding amounts owed by non-violent ex-felons is to be collected.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill creates an undesignated section of Florida law.

**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.