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Senate Bill 163 (as passed by the Senate)
Senate Bill 164 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Tory Rocca
Committee: Judiciary

Date Completed: 3-29-11

RATIONALE

Numerous statutes require the publication of notices and other information in a newspaper. Legal notices include, for example, government meeting minutes, bid proposals, election notices, public hearing announcements, and foreclosure notices. Typically, a statute requires publication in a newspaper of general circulation in the applicable city, township, or county, or, if there is none, in a newspaper in an adjoining local unit. For the purpose of these requirements, the Michigan Compiled Laws contain a definition of the term "newspaper", which refers to a published newspaper that meets specified criteria. It has been pointed out that the traditional news media face a changing environment due to economic conditions and technological advances. In at least one Michigan city, the seven-day-a-week newspaper has been replaced by an online version and two weekly printed editions.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 legal notices to be published online.

CONTENT

Senate Bill 163 would amend Public Act 247 of 1963, which defines "newspaper" as used in State statutes for 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 the 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.**

The bill also would repeal sections of the Revised Judicature Act (RJA) that define "newspaper".

Senate Bill 164 (S-1) would amend the Natural Resources and Environmental Protection Act to refer to a newspaper as defined in Public Act 247 of 1963, rather than in the RJA, in requirements for publication of a notice of the sale of surplus land; and revise provisions for publication in an adjoining county.

The bills are tie-barred.

Senate Bill 163

Print Publication

Under Public Act 247 of 1963, the term "newspaper", as used in any statute of the State except the RJA, 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% 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 this provision.

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 substantial news and editorial content.

- News content on the website is published and posted regularly 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 substantial number 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.

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.

A publication or website that met either definition could not serve as a newspaper for publication of a notice, however, 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% 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", which 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 164 (S-1)

Part 21 (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 RJA.

The bill would refer, instead, to a newspaper as defined in Public Act 247 of 1963.

The bill also would require notice to be published in a newspaper in a county nearest to the county in which land subject to notice requirements was located, if there were no publication or website that met the requirements of Public Act 247 in the county where the surplus 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.

MCL 691.1051 (S.B. 163)
324.2133 (S.B. 164)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

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. In these situations, it is still vital that legal notices be published to inform the public of governmental activities. Although legal notices often can be published in a neighboring community's newspaper, if there is no local paper, that may not be the ideal solution where residents have come to rely on an online publication that replaced their printed newspaper.

Senate Bill 163 essentially would set 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, legal 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, legal notices would be published on that website. If there were no print publication or website that qualified, legal 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 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.

Supporting Argument

The bills would bring consistency to the statutes. In addition to revising the definition of "newspaper" in Public Act 247 of 1963, Senate Bill 163 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 164 (S-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.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 163

The bill would have no effect on State or local revenue and an indeterminate impact on State and local expenses. The impact on expenses would depend how the cost of alternative publication options allowed under the bill would compare with the cost of the options available under current law. Because the additional options under the bill essentially would be available only when the options under current law were not available, the bill would likely have a negligible impact on expenses.

Senate Bill 164 (S-1)

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.