

NEWSPAPER PUBLICATION AND INTERNET POSTING OF PUBLIC NOTICES REQUIRED BY LAW

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Senate Bill 258 (S-2) as passed by the Senate
Sponsor: Sen. Curtis S. VanderWall

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

Senate Bill 259 as passed by the Senate
Sponsor: Sen. Sylvia Santana

House Committee: Local Government and Municipal Finance
Senate Committee: Local Government
Complete to 1-21-22

SUMMARY:

Senate Bills 258 and 259 would amend 1963 PA 247 and the Revised Judicature Act (RJA), which together prescribe conditions for a publication to qualify as a *newspaper* for any law requiring newspaper publication of a public notice. The bills would revise those conditions, provide for internet publication of notices, and require that printed copies be kept.

Current definition of “newspaper” in Michigan law

1963 PA 247 defines the term *newspaper* for notice publication purposes under any Michigan law except the RJA, which has its own definition for those purposes. The two definitions are identical except for their location requirements. Under the acts, for purposes of publishing a notice, *newspaper* means a newspaper 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 or transmitted news and intelligence of a general character.
 - Legal news.
- It has a bona fide list of paying subscribers or 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 county, township, city, village, or district where the notice is required to be published (or, under the RJA, in the county where the applicable court is situated). A newspaper does not lose eligibility for interruption of continuous publication because of 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.
- It annually averages at least 25% news and editorial content (i.e., not advertising) per issue.

If no newspaper in the location specified above meets the above requirements, *newspaper* includes any newspaper in an adjoining county that qualifies under the above to publish notices in that county.

Senate Bill 258 would amend 1963 PA 247 to change the above 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.

Under the bill, when used in any Michigan statute in relation to publication of a *notice* (unless expressly provided otherwise in that statute), *newspaper* would mean 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 would include an order, ordinance, advertisement, report, and any other statement or information required by statute to be published.

Required area would mean 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 would mean 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, would not qualify to serve as a newspaper for publication of the notice.

Control would mean 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* would mean a publication in an adjoining county, township, city, village, district, or other geographic territory that otherwise met those requirements.

Internet access to notices

The bill also would require the operator of a newspaper in which a notice is published under 1963 PA 247 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 would not invalidate the notice published in the print version of the newspaper.

Archival printed copies

Finally, the operator of a newspaper that publishes a notice would have 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.

MCL 691.1051

Senate Bill 259 would amend the section of the RJA that defines “newspaper” for purposes of that act to instead provide that when *newspaper* is used regarding publication of a notice, it means that term as defined in 1963 PA 247 (SB 258). The default *required area* would be the county in which the applicable court is located, although a different area could be designated.

The bill also would repeal a section of the act that duplicates many provisions of the current RJA definition of “newspaper,” with specific applicability to service of process under given circumstances.

MCL 600.1461 and MCL 600.1950 (repealed)

Senate Bills 258 and 259 are tie-barred to one another, which means that neither bill could take effect unless both were enacted.

FISCAL IMPACT:

The bills would have no fiscal impact on the state or local units of government.

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■ 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.