



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 220

128th General Assembly

(As Reported by H. Local Government & Public Administration)

**Reps.** Chandler, Blair, Brown, Derickson, Gardner, Hagan, Harwood, Letson, Skindell, Weddington, B. Williams, Yuko

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## BILL SUMMARY

The bill implements recommendations of the Local Government Public Notice Task Force, as follows:

- Revises the requirements for a newspaper to qualify as a "newspaper of general circulation" in which local governments are required to publish notices and advertisements.
- Eliminates the requirement that publication be made in a newspaper *published in* a political subdivision, in two newspapers, or in two newspapers of opposite politics and the requirement that a newspaper have second-class postal privileges; instead, uses the standard of publishing notices and advertisements in a newspaper of general circulation in a political subdivision.
- Authorizes mediation under a program operated by the court of common pleas if a newspaper's qualifications as a newspaper of general circulation are in question.
- Specifies that if a statute requires a local government to publish a notice or advertisement two or more times in a newspaper and the statute authorizes the use of an alternative publication procedure, the local government may satisfy the multiple publication requirement by publishing the first notice or advertisement in its entirety in a newspaper of general circulation (which may be made in a pre-printed insert), and by publishing a second, abbreviated notice or advertisement in that newspaper and on the newspaper's Internet web site, if any; the abbreviated notice must refer to a web site operated and maintained by the local government and on which the entire notice or advertisement must be posted.

- Requires each newspaper to establish a "government rate" for publication of local government public notices and advertisements, which cannot exceed the lowest classified advertising rate and lowest insert rate paid by other advertisers, and to post the notices and advertisements free on the newspaper's Internet web site, if the newspaper has one.
- Allows county auditors to charge a land or home owner a flat fee for the cost of publishing the land or home on the delinquent real property or delinquent manufactured home tax lists, and to place the fee as a lien on tax delinquent parcels or manufactured homes if it is not paid.
- Prohibits certain notices pertaining to delinquent land and delinquent tax lists from being published in a daily law journal.
- Authorizes publication of a succinct summary of a local government's ordinance, resolution, or rule in a newspaper of general circulation, rather than the entire ordinance, resolution, or rule.

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## **CONTENT AND OPERATION**

### **Background**

Sub. H.B. 101 of the 126th General Assembly created the Local Government Public Notice Task Force, consisting of 22 members, and assigned the Task Force the task of reviewing public notice requirements for local governments to decide if the notice requirements are still needed, to determine if there are other methods to fulfill those requirements, and to determine if any changes in the publication methods would enhance public availability and provide cost savings to local governments. The Task Force issued a report of its findings on May 31, 2008. The bill implements some of the Task Force's recommendations.

The bill does not revise the publication requirements for state government or state agencies.

### **Publication standard: "newspaper of general circulation"**

#### **Qualifications**

(R.C. 7.12(A); repeal of R.C. 7.14 and 701.04)

The bill modifies the requirements for a newspaper to qualify as a "newspaper of general circulation" in which legal publication of notices and advertisements are made by political subdivisions. Under existing law, to qualify as a newspaper in which

notices and advertisements may be published, the newspaper must be *published in* the political subdivision, or if no newspaper is published in the subdivision, it must be of general circulation therein. If there are less than two newspapers published in the political subdivision, then publication must be made in a newspaper regularly issued at stated intervals from a known office of publication located in the political subdivision. Under existing law, except for daily law journals in which a judge serves legal notices,<sup>1</sup> the newspaper must bear a title or name, be regularly issued at least once a week for a definite price or consideration paid for by not less than 50% of those to whom distribution is made, have a second-class mailing privilege, be not less than four pages, be published continuously during the immediately preceding one-year period, and be circulated generally in the subdivision in which it is published. Additionally, the newspaper must be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.

The bill revises numerous local government notice and advertisement statutes throughout the Revised Code to provide that publication must be made in a newspaper of general circulation in a political subdivision, rather than in a newspaper published in the political subdivision. The bill eliminates the requirements of publication in newspapers of opposite politics, in two newspapers, or in newspapers with second-class mailing privileges and instead uses the standard of publishing notices and advertisements in a newspaper of general circulation in the political subdivision. Except for daily law journals, the bill defines a "newspaper" or "newspaper of general circulation" as a publication bearing a title or name that is regularly issued at least once a week, and that:

- Is printed in the English language using standard printing methods, being not less than eight pages in the broadsheet format or 16 pages in the tabloid format.
- Contains at least 25% editorial content, including local news, political information, and local sports.
- Has been published continuously for at least three years immediately preceding legal publication by the political subdivision.
- Is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication, by proof of a United States Postal Service "Statement of Ownership, Management, and Circulation," PS Form 3526, filed with the

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<sup>1</sup> R.C. 2701.09 requires judges of any county in which a daily law journal is printed to publish in the journal the court calendar and other matters pending in the court.

local postmaster, or by proof of an independent audit of the publication performed, within the 12 months immediately preceding legal publication.

➤ Has the ability to add subscribers in the political subdivision to its distribution list.

The bill repeals two provisions (R.C. 7.14 and 701.04) that allow publication of notices in a newspaper of general circulation when no newspaper is published in the place designated in a statute or when a publisher refuses to insert a notice in the publisher's newspaper. This "out" is no longer needed because the bill establishes the general standard that notices and advertisements are to be published in a newspaper of general circulation in the political subdivision.

### **Mediation procedure if newspaper's qualifications are in question**

(R.C. 7.12(B))

Any person who questions whether a publication is a newspaper of general circulation in which notices or advertisements may be published may request mediation to determine the matter. Under the bill, the person who questions the newspaper's qualifications may deliver a written request for mediation to the publisher of the publication and to the court of common pleas of the county in which is located the political subdivision in which the publication is circulated. The court of common pleas must appoint a mediator, and the parties must follow the procedures of the mediation program operated by the court.

### **Alternative publication procedure for notices or advertisements**

(R.C. 7.16)

In many instances, continuing law requires a political subdivision to publish notices or advertisements more than twice. The bill establishes an alternative publication procedure that political subdivisions operating and maintaining Internet web sites may choose to follow for publication of notices and advertisements. The bill provides that if a Revised Code statute requires a political subdivision to publish a notice or advertisement two or more times in a newspaper of general circulation, the statute refers to the alternative publication procedure, and the political subdivision operates and maintains an Internet web site, the *first* publication of the notice or advertisement must be made in its entirety in a newspaper of general circulation and may be made in a pre-printed insert in the newspaper. But the *second* publication otherwise required by that statute may be made in abbreviated form in a newspaper of general circulation in the political subdivision designated in that statute and on the newspaper's Internet web site (if any exists). The political subdivision may eliminate

any further newspaper publications required by that statute, provided that the second, abbreviated notice or advertisement in the newspaper:

- (1) Is published in the newspaper in which it was first published and on that newspaper's Internet web site, if the newspaper has one;
- (2) Includes a statement that the notice or advertisement is posted in its entirety on the political subdivision's Internet web site;
- (3) Includes the political subdivision's and the newspaper's Internet addresses;
- (4) Includes instructions for accessing the notice or advertisement on the subdivision's and newspaper's Internet web site; and
- (5) Is of sufficient size that it is at least one-half of the size of the first publication in the newspaper.

In choosing to use this alternative publication procedure, a notice or advertisement published on a political subdivision's web site must be published in its entirety in accordance with the statute that requires publication. And if a political subdivision does not operate and maintain, or ceases to operate and maintain, an Internet web site, the political subdivision cannot publish a notice or advertisement under this alternative procedure, but instead must comply with the original publication requirements.

The bill does not revise laws that already require a less stringent publication standard whereby a local government may refer to its web site in the first newspaper publication of a notice or advertisement, for example R.C. 307.37, 505.75, or 731.14 among other statutes. The bill also does not eliminate the requirement that a board of elections post election notices on its web site, if any is operated and maintained by the board, for 30 days prior to an election (*see*, for example, R.C. 511.34 or 5705.196).

### **Government rate for publication and free Internet postings**

(R.C. 7.10 and 7.11)

Continuing law allows newspaper publishers to charge the public officers of state and local governments for publication of advertisements, notices, and proclamations, except those relating to proposed amendments to the Ohio Constitution. Under existing law, the publishers may charge the same rates they charge under annual contracts for a like amount of space to other advertisers who advertise in the newspaper's general display advertising columns. The bill requires newspaper publishers to instead establish and charge public officers of a county, municipal

corporation, township, school, or other political subdivision (but not public officers of the state) government rates for the publication of advertisements, notices, and proclamations, which must include free publication of them on the newspaper's Internet web site, if the newspaper has one. The government rate cannot exceed the lowest classified advertising rate and lowest insert rate paid by other advertisers. In addition, the government rate must be charged for various types of notices printed in display form, rather than the commercial rate.

The bill also requires that legal advertisements and notices be printed in newspapers of general circulation and be posted on a newspaper's Internet web site, if the newspaper has one.

### **Costs of publishing delinquent tax lists**

(R.C. 319.54, 4503.06(H), and 5721.04)

Continuing law allows county auditors to apportion the costs of publishing delinquent manufactured home tax lists, delinquent personal or real property tax lists, delinquent vacant land tax lists, and display notices among the taxing districts in proportion to the amount of delinquent taxes advertised in each taxing district. The bill creates another method by which county auditors may collect publication costs. Under the bill, a county auditor may charge the owner of a home or land on a list a flat fee for the cost of publishing the list and, if the fee is not paid, may place the fee upon the tax duplicate as a lien on each listed home or land, to be collected as other manufactured home or real property taxes.

### **Publication of delinquent tax lists**

(R.C. 5719.04 and 5721.03)

Under current law, a delinquent personal property tax list, delinquent tax list, and delinquent vacant land tax list may be published in a daily law journal. Newspapers that are designated as official publishers of court calendars (daily law journals) under R.C. 2701.09 automatically qualify as newspapers of general circulation, and legal notices, including these lists, may be published in them, without having to meet the criteria contained in the definition of "newspaper of general circulation." *See State ex rel. Court Index Press, Inc. v. Deters*, 56 Ohio St.3d 140, 565 N.E.2d 532 (1990) and *In re Starkey*, 150 Ohio App.3d 612, 782 N.E.2d 665 (2002).

The bill provides that these delinquent tax lists must be published in a "newspaper of general circulation," as defined in the bill, and may be published on a pre-printed insert in the newspaper, but the lists may no longer be published in a daily law journal. Otherwise, the bill does not change the number of times these lists must be

published, nor does it allow publication of these lists under the bill's alternative publication procedure.

Under the bill, the cost of the second publication of any one of these lists cannot exceed three-fourths of the cost of the first publication of the list.

### **Notices pertaining to sales or foreclosures of delinquent land**

(R.C. 323.73(A), 2329.26(A), 5721.18(B), 5721.31(C), and 5722.13)

Notices of public auctions of abandoned land or land held by a subdivision under a land reutilization program, of sales of land taken in execution of a judgment, of foreclosures, and of sales of delinquent land tax certificates must continue to be published the number of times required by continuing law and may not be published under the bill's alternative publication procedure. However, the bill requires that these notices be published in a "newspaper of general circulation" and provides that they cannot be published in a daily law journal.

### **Publishing summaries of rules, ordinances, and resolutions**

Existing law, for example R.C. 307.791, 705.16, and 731.21 among other statutes, provides that upon passage of a rule, ordinance, or resolution, its complete text, or a succinct summary of it, must be published in the newspaper or, in some cases, in two newspapers of general circulation. The bill requires that a succinct summary of the rule, ordinance, or resolution be published in a newspaper of general circulation, rather than the entire rule, ordinance, or resolution.

The bill also applies the succinct summary publication requirement to the bylaws and rules of boards of park commissioners (R.C. 1545.09) because those boards are required to publish their bylaws and rules in the same manner as municipal corporations' ordinances are published.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	06-16-09
Reported, H. Local Gov't & Public Administration	05-13-10

H0220-RH-128.docx/jc

