

ASSEMBLY, No. 1618

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman JON M. BRAMNICK
District 21 (Morris, Somerset and Union)
Assemblyman ALBERT COUTINHO
District 29 (Essex)

Co-Sponsored by:

Assemblyman Clifton

SYNOPSIS

Permits publication of legal notices by governments and individuals on official government website instead of newspaper.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/17/2012)

1 AN ACT concerning electronic publication of certain legal notices,
2 supplementing Title 35 of the Revised Statutes and amending
3 P.L.1975, c.231 and P.L.2002, c.91.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. (New section) This act shall be known and may be cited as
9 the "Electronic Publication of Legal Notices Act."
10

11 2. (New section) The Legislature finds and declares:

12 a. There has been a steady decline in newspaper readership in
13 the past several decades, while, at the same time there has been an
14 increase in the number of households with access to the Internet.

15 b. The State of New Jersey, its 21 counties, and many of its
16 566 municipalities maintain official government websites that are
17 available to the public 24 hours per day.

18 c. Many legal notices published solely in newspapers go
19 unread and unnoticed by the public because casual newspaper
20 readers generally do not read the legal notice section.

21 d. Permitting the publication of legal notices on official
22 government websites will make those notices more easily accessible
23 to a greater number of people, thereby promoting increased public
24 participation in government.
25

26 3. (New section) For the purposes of this act:

27 "Electronic publication" or "electronically publish" means the
28 public advertisement of a legal notice in hypertext markup language
29 format (html), portable document format (PDF) or an equivalent
30 language format or image format, on an official government
31 Internet website in accordance with P.L. , c. (C.) (pending
32 before the Legislature as this bill).

33 "Government agency" or "agency" means any public entity
34 under the laws of New Jersey required to publish legal notices.

35 "Legal notice" or "notice" means any matter of a government
36 agency or an individual that, pursuant to law, rule or regulation is
37 required to be officially advertised in a newspaper in accordance
38 with R.S.35:1-1 et seq.

39 "Notice website" means an Internet website that is maintained by
40 a government agency, or by a third party under contract with the
41 agency, that contains links to the legal notices electronically
42 published by the agency.

43 "Official Internet website" or "official website" means the
44 Internet location designated by a government agency as its primary

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 source of information about the agency on the Internet.

2

3 4. (New section) Whenever a government agency or an
4 individual is required by law to publish a legal notice in one or
5 more newspapers, the government agency or individual may cause
6 the required notice to be published on an official government notice
7 website instead of a newspaper, provided all of the following
8 requirements are met:

9 a. The government agency, or the host of the notice website,
10 shall enter into a service level agreement with an Internet service
11 provider that guarantees the site is accessible to the public over the
12 Internet at least 98% of the time, 24 hours a day, 365 days a year;
13 and

14 b. The government agency's official Internet website, the notice
15 webpage containing links to the legal notices, and the webpages
16 containing the actual legal notices, shall be designed to comply with
17 the accessibility standards of section 508 of the "Rehabilitation Act
18 of 1973," as amended (29 U.S.C. s.794d); and

19 c. The government agency's official Internet website
20 containing the notice website shall be registered with the State
21 Office of Information Technology, in but not of the Department of
22 the Treasury, for posting on the State Internet website that lists
23 Internet sites of agencies; and

24 d. The government agency's official Internet website shall
25 prominently display a link to the notice website, which shall be an
26 index webpage containing a list of all current legal notices of the
27 agency, with links to the full text of those notices, not just to
28 summaries of those notices. The index webpage shall also contain a
29 search function and other features that improve public accessibility
30 to legal notices; and

31 e. (1) Each webpage on the official website with a link to the
32 notice website or index webpage, as well as the notice website
33 itself, shall contain an e-mail link to submit a complaint to the
34 government agency if access to any legal notice fails;

35 (2) The government agency shall review all complaints reported
36 pursuant to paragraph (1) of this subsection to determine the cause
37 of any access problem and shall document the findings and any
38 action taken to resolve it;

39 (3) The government agency shall keep and make available for
40 public inspection all records of complaints and service accessibility
41 failures reported pursuant to paragraph (1) of this subsection; and

42 f. Whenever an individual is unable to access an electronic
43 publication of a government notice, the government agency shall
44 provide a copy of the notice to the individual free of charge; and

45 g. Notices shall remain available on the notice website at least
46 until the last posting date required by law has expired or until the
47 event described in a notice has taken place, whichever is later; and

48 h. The government agency shall create, or have provided by the

1 notice website contractor, and keep on file an electronic or paper
2 based certification or affidavit of posting required for each legal
3 notice in the same manner as is done for printed notices. The
4 affidavit or certification shall state that the notice was posted from
5 the initial date through either the last posting date required by law
6 or the date when the event described in a notice takes place,
7 whichever occurs later, except that a certification shall not be
8 required to be notarized. The government agency shall provide a
9 copy of the certification or affidavit free of charge upon request;
10 and

11 i. The government agency shall designate one or more contact
12 persons to handle the intake and processing of legal notices
13 requested to be published by an individual, and shall comply with
14 the additional requirements of section 7 of P.L. , c. (C.)
15 (pending before the Legislature as this bill), concerning the Internet
16 publication of legal notices required to be published by an
17 individual.

18 j. The government agency shall designate an official to be
19 responsible for electronic publications and shall post that official's
20 name and contact information on the notice website.

21

22 5. (New section) Proof of publication of an electronically
23 published legal notice for the purpose of complying with public
24 notice requirements shall be satisfied and deemed conclusive upon
25 the provision of the certification or affidavit described in subsection
26 h. of section 4 of P.L. , c. (C.) (pending before the
27 Legislature as this bill) by the official responsible for the electronic
28 publication, stating that the notice was posted from the initial date
29 until the last posting date required by law.

30

31 6. (New section) A local government agency , including any
32 entity defined as a contracting unit pursuant to section 2 of
33 P.L.1971, c.189 (C.40A:11-2) or a district pursuant to
34 N.J.S:18A:18A-2, may elect to electronically publish legal notices
35 on a notice website in accordance with section 4 of P.L. , c.
36 (C.) (pending before the Legislature as this bill) provided:

37 a. (1) The local government agency annually adopts a
38 resolution or an ordinance, as appropriate, authorizing publication
39 of legal notices via the Internet and publishes a legal advertisement
40 following the adoption of the resolution or ordinance, which
41 includes the full text of the resolution or ordinance authorizing
42 Internet publication, in one or more official newspaper having the
43 highest circulation within the jurisdiction of the local government
44 agency, announcing that legal notices are posted on the agency's
45 notice website, in the following form:

46 "Internet Posting of Public Notices: (name of local government
47 agency)

48 The (name of agency) announces that public notices on the

1 following matters are posted on the (name of agency) public notice
2 website: http://www._____ (substitute
3 Internet address protocol in common usage if different);”

4 (2) The legal advertisement required under paragraph (1) of this
5 subsection shall close with the following:

6 “Free public access to the Internet is available within the (insert
7 name of county, municipality or service or jurisdictional area of the
8 local government agency) at (list all known locations). If someone
9 is unable to access the Internet, individual copies of notices can be
10 obtained by calling (insert appropriate agency phone number);” and

11 b. Dial up access to the Internet is available without telephone
12 toll charges generally throughout the jurisdiction of the local
13 government agency; and

14 c. Regular public Internet access is available without charge
15 within the jurisdiction of the local government agency through the
16 public library or at some other location; and

17 d. All local government notices electronically published are
18 available in printed form in the office of the clerk of the county
19 board of chosen freeholders, the municipal clerk, the secretary of
20 the local government agency, or other appropriate office, as the case
21 may be; and

22 e. When a municipality does not have an official website, the
23 municipal legal notices shall be published on the existing official
24 website of the county in which the municipality is located, in
25 accordance with the provisions of P.L. , c. (C.) (pending
26 before the Legislature as this bill).

27 f. Any local government agency which elects to electronically
28 publish legal notices on a notice website must publish, in addition
29 to legal notices as defined by section 3 of P.L. , c. (C.)
30 (pending before the Legislature as this bill), notice of any public
31 meeting, the minutes of any meeting of the governing body, the full
32 text of any proposed ordinance or resolution to be considered by the
33 governing body, the municipal code, all public contracts for goods
34 or services, and a summary of the results of any litigation involving
35 the local government agency, provided that the posting of the
36 litigation information does not violate any agreed to or court
37 ordered confidentiality provisions.

38
39 7. (New section) An individual required by law to publish an
40 official notice in one or more newspapers may cause the notice to
41 be published on an appropriate State or local government notice
42 website instead of a newspaper, provided:

43 a. The appropriate State or local government agency maintains
44 an official notice website in accordance with P.L. , c. (pending
45 before the Legislature as this bill); and

46 b. The individual shall contact the appropriate State or local
47 government agency and complete a written request for the
48 publication of the legal notice; and

1 c. The appropriate State or local government agency shall
2 cause the notice to be published on its official notice website at no
3 cost to the individual, and the notice shall meet all of the necessary
4 content and time frame requirements stipulated by law; and

5 d. The appropriate State or local government agency shall
6 provide the individual a copy of the electronically published notice,
7 and a copy of the certification or affidavit of publishing required
8 under subsection h. of section 4 of P.L. , c. (C.) (pending
9 before the Legislature as this bill).

10
11 8. Section 3 of P.L.1975, c.231 (C.10:4-8) is amended to read as
12 follows:

13 As used in this act:

14 a. "Public body" means a commission, authority, board,
15 council, committee or any other group of two or more persons
16 organized under the laws of this State, and collectively empowered
17 as a voting body to perform a public governmental function
18 affecting the rights, duties, obligations, privileges, benefits, or
19 other legal relations of any person, or collectively authorized to
20 spend public funds including the Legislature, but does not mean or
21 include the judicial branch of the government, any grand or petit
22 jury, any parole board or any agency or body acting in a parole
23 capacity, the State Commission of Investigation, the
24 Apportionment Commission established under Article IV, Section
25 III, of the Constitution, or any political party committee organized
26 under Title 19 of the Revised Statutes.

27 b. "Meeting" means and includes any gathering whether
28 corporeal or by means of communication equipment, which is
29 attended by, or open to, all of the members of a public body, held
30 with the intent, on the part of the members of the body present, to
31 discuss or act as a unit upon the specific public business of that
32 body. Meeting does not mean or include any such gathering (1)
33 attended by less than an effective majority of the members of a
34 public body, or (2) attended by or open to all the members of three
35 or more similar public bodies at a convention or similar gathering.

36 c. "Public business" means and includes all matters which
37 relate in any way, directly or indirectly, to the performance of the
38 public body's functions or the conduct of its business.

39 d. "Adequate notice" means written advance notice of at least
40 48 hours, giving the time, date, location and, to the extent known,
41 the agenda of any regular, special or rescheduled meeting, which
42 notice shall accurately state whether formal action may or may not
43 be taken and which shall be (1) prominently posted in at least one
44 public place reserved for such or similar announcements, (2)
45 mailed, telephoned, telegraphed, or hand delivered to at least two
46 newspapers which newspapers shall be designated by the public
47 body to receive such notices because they have the greatest
48 likelihood of informing the public within the area of jurisdiction of

1 the public body of such meetings, one of which shall be the official
2 newspaper, where any such has been designated by the public body
3 or if the public body has failed to so designate, where any has been
4 designated by the governing body of the political subdivision whose
5 geographic boundaries are coextensive with that of the public body,
6 however, a public body may satisfy this requirement by posting the
7 required information on the Internet pursuant to the provisions of
8 sections 4 and 6 of P.L. , c. (C.) and (C.) (pending before
9 the Legislature as this bill), and (3) filed with the clerk of the
10 municipality when the public body's geographic boundaries are
11 coextensive with that of a single municipality, with the clerk of the
12 county when the public body's geographic boundaries are
13 coextensive with that of a single county, and with the Secretary of
14 State if the public body has Statewide jurisdiction. For any other
15 public body the filing shall be with the clerk or chief administrative
16 officer of such other public body and each municipal or county
17 clerk of each municipality or county encompassed within the
18 jurisdiction of such public body. Where annual notice or revisions
19 thereof in compliance with section 13 of **[this act]** P.L.1975, c.231
20 (C.10:4-18) set forth the location of any meeting, no further notice
21 shall be required for such meeting.

22 (cf: P.L.1981, c.176, s.2)

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24 9. Section 4 of P.L.1975, c.231 (C.10:4-9) is amended to read
25 as follows:

26 4. a. Except as provided by subsection b. of this section, or for
27 any meeting limited only to consideration of items listed in
28 **[section 7. b.]** subsection b. of section 7 of P.L.1975, c.231
29 (C.10:4-12) no public body shall hold a meeting unless adequate
30 notice thereof has been provided to the public.

31 b. Upon the affirmative vote of three quarters of the members
32 present a public body may hold a meeting notwithstanding the
33 failure to provide adequate notice if:

34 (1) such meeting is required in order to deal with matters of such
35 urgency and importance that a delay for the purpose of providing
36 adequate notice would be likely to result in substantial harm to the
37 public interest; and

38 (2) the meeting is limited to discussion of and acting with respect
39 to such matters of urgency and importance; and

40 (3) notice of such meeting is provided as soon as possible
41 following the calling of such meeting by posting written notice of
42 the same in the public place described in **[section 3. d. above]**
43 subsection d. of section 3 of P.L.1975, c. 231 (C.10:4-8), and also
44 by notifying the two newspapers described in [section 3. d.]
45 subsection d. of section 3 of P.L.1975, c.231 (C.10:4-8) by
46 telephone, telegram, or by delivering a written notice of same to

1 such newspapers, or by posting the notice on the notice website
2 maintained by the public body; and

3 (4) either (a) the public body could not reasonably have foreseen
4 the need for such meeting at a time when adequate notice could
5 have been provided; or (b) although the public body could
6 reasonably have foreseen the need for such meeting at a time when
7 adequate notice could have been provided, it nevertheless failed to
8 do so.

9 (cf: P.L.1975, c.231, s.4)

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11 10. Section 1 of P.L.2002, c.91 (C.10:4-9.1) is amended to read
12 as follows:

13 1. In addition to the notice requirements of the “Open Public
14 Meetings Act,” P.L.1975, c.231 (C.10:4-6 et seq.), a public body
15 may provide electronic notice of any meeting of the public body
16 through the Internet, provided the public body has complied with
17 the provisions of P.L. , c. (C. et al.) (pending before the
18 Legislature as this bill).

19 As used in this section, “electronic notice” means advance notice
20 available to the public via [electronic transmission of at least 48
21 hours, giving the time, date, location and, to the extent known, the
22 agenda of any regular, special or rescheduled meeting] an
23 electronic publication as defined by section 3 of P.L. , c. (C.)
24 (pending before the Legislature as this bill), which notice shall
25 accurately state whether formal action may or may not be taken at
26 such meeting.

27 As used in this section, “Internet” means the international
28 computer network of both federal and non-federal interoperable
29 packet switched data networks.

30 (cf: P.L.2002, c.91, s.1)

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32 11. (New section) Within 6 months of the enactment of P.L. ,
33 c. (C.) (pending before the Legislature as this bill), the Chief
34 Technology Officer of the Office of Information Technology, in
35 consultation with the Director of the Division of Local Government
36 Services in the Department of Community Affairs shall promulgate
37 rules and regulations, pursuant to the “Administrative Procedure
38 Act,” P.L.1968, c.410 (C.52:14B 1-et seq.), in order to effectuate
39 the provisions of this act.

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41 12. This act shall take effect on the first day of the seventh
42 month next following enactment, however, section 11 of this act
43 shall take effect immediately.

STATEMENT

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This bill authorizes individuals, as well as local, county and State government units, including school districts, to meet publication requirements for legal notices by posting such notices on officially designated searchable government websites, so long as Internet accessibility and reliability requirements are met. Nothing in this bill alters existing notice content and publication time frame requirements, nor does this bill, as amended by the committee, eliminate an individual or government entity's ability to meet publication requirements through newspaper publication as set forth under current law.

The bill expands the geographic availability of legal notices, many of which need only appear in one local or regional newspaper under current law. Under the provisions of the bill, as amended by the committee, Internet publication is only available to local governments following the adoption of a resolution or ordinance authorizing the publication of notices on the internet and when the local government can establish that free public Internet access is available in the jurisdiction. The bill further requires that a link to the notice webpage be prominently displayed on the homepage of the publishing government entity and that the notice webpage address be advertised, along with a listing of free public Internet access locations, in one or more newspapers within the jurisdiction. Additionally, publication websites must be accessible online at least 98% of the time on a continuous basis and the government entity must provide free copies of such notices when an interested person is unable to access the official website. The bill requires that any local government agency which elects to publish notices on the internet also post other information such as notices of any public meeting, the minutes of a meeting of the governing body, the full text of any resolution or ordinance considered by the governing body, the municipal code, contracts for goods and services, and the results of any legal action in which the local government agency was a party, provided the disclosure does not violate any confidentiality agreement or court order. A local government agency is defined as any public entity governed by the "Local Public Contracts Law" or the "Public School Contracts Law."

The bill also requires an individual wishing to publish a legal notice on an official website to contact the appropriate local, county or State government entity to formally request that the legal notice be published. Such publication is only available when the applicable government entity maintains a notice website or otherwise publishes legal notices pursuant to the provisions of this bill. Furthermore, when a municipality does not have an official website, this bill allows for municipal legal notices to be published on the website of the county in which the property is located.

Proof of publication of all Internet published legal notices shall

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1 be ascertained in the same manner as if the notices had been
2 published in a print newspaper. The Chief Technology Officer of
3 the Office of Information technology, in consultation with the
4 Director of the Division of Local Government Services in the
5 Department of Community Affairs, is required to promulgate any
6 rules and regulations in order to effectuate the provisions of this
7 bill.

8 Finally, the bill amends three sections of the “Senator Byron M.
9 Baer Open Public Meetings Act” to reflect the new internet
10 publication and notice requirements imposed by the bill.