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SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on July 19, 2010, with amendments.



(Sponsorship Updated As Of: 9/21/2010)

1 AN ACT concerning electronic publication of certain legal notices,
2 supplementing Title 35 of the Revised Statutes ¹and amending
3 P.L.1975, c.231 and P.L.2002, c.91¹.
4

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

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

11 2. 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. 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), ¹portable document format (PDF)¹ or an equivalent
30 language format ¹or image format¹, 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted July 19, 2010.

1 source of information about the agency on the Internet.

2

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

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

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

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

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

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

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

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

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

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

47 h. The government agency shall create, or have provided by the
48 notice website contractor, and keep on file '[a] an electronic or

1 paper based¹ certification or affidavit of posting required for each
2 legal notice in the same manner as is done for printed notices. The
3 affidavit or certification shall state that the notice was posted from
4 the initial date through either the last posting date required by law
5 or the date when the event described in a notice takes place,
6 whichever occurs later, except that a certification shall not be
7 required to be notarized¹. The government agency shall provide a
8 copy of the certification or affidavit free of charge upon request¹;
9 and

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

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

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

30 6. (New section) A local government agency ¹, including any
31 entity defined as a contracting unit pursuant to section 2 of
32 P.L.1971, c.198 (C.40A:11-2) or a district pursuant to
33 N.J.S:18A:18A-2,¹ may elect to electronically publish legal notices
34 on a notice website in accordance with section 4 of P.L. ,
35 c. (C.) (pending before the Legislature as this bill) provided:

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

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

47 The (name of agency) announces that public notices on the
48 following matters are posted on the (name of agency) public notice

1 website: http://www._____ (substitute
2 Internet address protocol in common usage if different);”
3 (2) The legal advertisement required under paragraph (1) of this
4 subsection shall close with the following:
5 “Free public access to the Internet is available within the (insert
6 name of county, municipality or service or jurisdictional area of the
7 local government agency) at (list all known locations). If someone
8 is unable to access the Internet, individual copies of notices can be
9 obtained by calling (insert appropriate agency phone number);” and
10 b.¹ Dial up access to the Internet is available without telephone
11 toll charges generally throughout the jurisdiction of the local
12 government agency; and
13 ‘[b.] c.¹ Regular public Internet access is available without
14 charge within the jurisdiction of the local government agency
15 through the public library or at some other location; and
16 ‘[c. The local government agency adopts a resolution at the
17 annual meeting at which the official newspaper is designated, if
18 applicable, to provide for electronic publication of legal notices on
19 a notice website; and
20 d. (1) he local government agency publishes a legal
21 advertisement once a week in one or more official newspapers
22 having the highest circulation within the jurisdiction of the local
23 government agency, announcing that legal notices are posted on the
24 agency’s notice website, in the following form:
25 “Internet Posting of Public Notices: (name of local government
26 agency)
27 “The (name of agency) announces that public notices on the
28 following matters are posted on the (name of agency) public notice
29 website: http://www._____ (substitute
30 Internet address protocol in common usage if different);”
31 (2) Each legal advertisement required under paragraph (1) of
32 this subsection shall close with the following:
33 "Free public access to the Internet is available within the (insert
34 name of county, municipality or service or jurisdictional area of the
35 local government agency) at (list all known locations). If someone
36 is unable to access the Internet, individual copies of notices can be
37 obtained by calling (insert appropriate agency phone number);" and
38 e.¹ d.¹ All local government notices electronically published are
39 available in printed form in the office of the clerk of the county
40 board of chosen freeholders, the municipal clerk, the secretary of
41 the local government agency, or other appropriate office, as the case
42 may be; and
43 ‘[f.] e.¹ When a municipality does not have an official
44 website, the municipal legal notices shall be published on the
45 existing official website of the county in which the municipality is
46 located, in accordance with the provisions of P.L. , c. (C.)
47 (pending before the Legislature as this bill).

1 ¹f. Any local government agency which elects to electronically
2 publish legal notices on a notice website must publish, in addition
3 to legal notices as defined by section 3 of P.L. , c. (C.)
4 (pending before the Legislature as this bill), notice of any public
5 meeting, the minutes of any meeting of the governing body, the full
6 text of any proposed ordinance or resolution to be considered by the
7 governing body, the municipal code, all public contracts for goods
8 or services, and a summary of the results of any litigation involving
9 the local government agency, provided that the posting of the
10 litigation information does not violate any agreed to or court
11 ordered confidentiality provisions.¹

12
13 7. An individual required by law to publish an official notice in
14 one or more newspapers may cause the notice to be published on an
15 appropriate State or local government notice website instead of a
16 newspaper, provided:

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

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

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

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

32

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

35 As used in this act:

36 a. “Public body” means a commission, authority, board,
37 council, committee or any other group of two or more persons
38 organized under the laws of this State, and collectively empowered
39 as a voting body to perform a public governmental function
40 affecting the rights, duties, obligations, privileges, benefits, or other
41 legal relations of any person, or collectively authorized to spend
42 public funds including the Legislature, but does not mean or include
43 the judicial branch of the government, any grand or petit jury, any
44 parole board or any agency or body acting in a parole capacity, the
45 State Commission of Investigation, the Apportionment Commission
46 established under Article IV, Section III, of the Constitution, or any
47 political party committee organized under Title 19 of the Revised
48 Statutes.

1 b. “Meeting” means and includes any gathering whether
2 corporeal or by means of communication equipment, which is
3 attended by, or open to, all of the members of a public body, held
4 with the intent, on the part of the members of the body present, to
5 discuss or act as a unit upon the specific public business of that
6 body. Meeting does not mean or include any such gathering (1)
7 attended by less than an effective majority of the members of a
8 public body, or (2) attended by or open to all the members of three
9 or more similar public bodies at a convention or similar gathering.

10 c. “Public business” means and includes all matters which
11 relate in any way, directly or indirectly, to the performance of the
12 public body's functions or the conduct of its business.

13 d. “Adequate notice” means written advance notice of at least
14 48 hours, giving the time, date, location and, to the extent known,
15 the agenda of any regular, special or rescheduled meeting, which
16 notice shall accurately state whether formal action may or may not
17 be taken and which shall be (1) prominently posted in at least one
18 public place reserved for such or similar announcements, (2)
19 mailed, telephoned, telegraphed, or hand delivered to at least two
20 newspapers which newspapers shall be designated by the public
21 body to receive such notices because they have the greatest
22 likelihood of informing the public within the area of jurisdiction of
23 the public body of such meetings, one of which shall be the official
24 newspaper, where any such has been designated by the public body
25 or if the public body has failed to so designate, where any has been
26 designated by the governing body of the political subdivision whose
27 geographic boundaries are coextensive with that of the public body,
28 however, a public body may satisfy this requirement by posting the
29 required information on the Internet pursuant to the provisions of
30 sections 4 and 6 of P.L. , c. (C.) and (C.) (pending before
31 the Legislature as this bill), and (3) filed with the clerk of the
32 municipality when the public body's geographic boundaries are
33 coextensive with that of a single municipality, with the clerk of the
34 county when the public body's geographic boundaries are
35 coextensive with that of a single county, and with the Secretary of
36 State if the public body has Statewide jurisdiction. For any other
37 public body the filing shall be with the clerk or chief administrative
38 officer of such other public body and each municipal or county
39 clerk of each municipality or county encompassed within the
40 jurisdiction of such public body. Where annual notice or revisions
41 thereof in compliance with section 13 of **[this act]** P.L.1975, c.231
42 (C.10:4-18) set forth the location of any meeting, no further notice
43 shall be required for such meeting.¹

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

45

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

1 4. a. Except as provided by subsection b. of this section, or for
2 any meeting limited only to consideration of items listed in
3 【section 7. b.】 subsection b. of section 7 of P.L.1975, c. 231
4 (C.10:4-12) no public body shall hold a meeting unless adequate
5 notice thereof has been provided to the public.

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

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

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

15 (3) notice of such meeting is provided as soon as possible
16 following the calling of such meeting by posting written notice of
17 the same in the public place described in 【section 3. d. above】
18 subsection d. of section 3 of P.L.1975, c. 231(C.10:4-8), and also by
19 notifying the two newspapers described in 【section 3. d.】
20 subsection d. of section 3 of P.L.1975, c. 231(C.10:4-8) by
21 telephone, telegram, or by delivering a written notice of same to
22 such newspapers, or by posting the notice on the notice website
23 maintained by the public body; and

24 (4) either (a) the public body could not reasonably have foreseen
25 the need for such meeting at a time when adequate notice could
26 have been provided; or (b) although the public body could
27 reasonably have foreseen the need for such meeting at a time when
28 adequate notice could have been provided, it nevertheless failed to
29 do so.¹

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

31
32 ¹10. Section 1 of P.L.2002, c.91 (C.10:4-9.1) is amended to read
33 as follows:

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

40 As used in this section, “electronic notice” means advance notice
41 available to the public via 【electronic transmission of at least 48
42 hours, giving the time, date, location and, to the extent known, the
43 agenda of any regular, special or rescheduled meeting】 an
44 electronic publication as defined by section 3 of P.L. , c. (C.)
45 (pending before the Legislature as this bill), which notice shall
46 accurately state whether formal action may or may not be taken at
47 such meeting.

1 As used in this section, “Internet” means the international
2 computer network of both federal and non-federal interoperable
3 packet switched data networks.¹

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

5
6 ¹**[8.] 11.**¹ (New section) Within 6 months of the enactment of
7 P.L. , c. (C.) (pending before the Legislature as this bill), the
8 ¹Chief Technology Officer of the Office of Information
9 Technology, in consultation with the¹ Director of the Division of
10 Local Government Services in the Department of Community
11 Affairs shall promulgate rules and regulations, pursuant to the
12 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B 1-et
13 seq.), in order to effectuate the provisions of this act.

14
15 ¹**[9.] 12.**¹ (New section) This act shall take effect on the first
16 day of the seventh month next following enactment, however,
17 section ¹**[8] 11**¹ of this act shall take effect immediately.