

Legislative Analysis



LOCAL GOVERNMENT PUBLIC NOTICE ACT

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House Bill 4183 (H-2) as reported from committee
Sponsor: Rep. Amanda Price
Committee: Local Government
Complete to (3-11-15)

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

BRIEF SUMMARY: The bill creates the "Local Government Public Notice Act" to phase in, until January 2025, new legal notice protocols. Fully implemented, the act would revise the manner in which local units of government publish legal notices, by prescribing appropriate electronic dissemination and archival protocols.

FISCAL IMPACT: As written, the bill could reduce expenses for local units of government when they are positioned to take advantage of the lower costs of publishing legal notices electronically. The rate of adoption is likely to vary by local unit over the course of the nine-year phase-in period. There is no impact on state revenues or costs.

THE APPARENT PROBLEM:

As many as 250 separate state statutes require that officials in cities, townships, school districts, and counties publish advance notice of their meetings, ordinances, assessments, proposed rezoning, elections, and much more.

Public notice is required by law, to ensure that citizens are well-informed and that local elected officials can be held accountable both for their actions and the expenditure of tax dollars.

Historically, public notices have been published in daily or weekly newspapers. The cost to publish the many required notices can reach \$4,000 in a small township, and up to \$50,000 in a large county.

Many local units of government, although not all, operate websites. Likewise, many citizens seek information about their local governments by using the Internet to find timely information online.

Legislation has been introduced that allows local officials to phase in new notice distribution methods during the next nine years. The new methods allow for print and electronic dissemination until January 2025, after which legal notices would be published online, via the Internet.

THE CONTENT OF THE BILL:

House Bill 4183 (H-2) would create a new act to be known as the "Local Government Public Notice Act," which would revise the manner in which local units of government publish legal notices.

The bill prescribes electronic dissemination and archival protocols; requires the compilation of permanent public notice lists enabling regular or electronic mailings to those desiring notice of legal matters; allows voters to decide if they prefer newspaper publication for up to five years; and requires a notice to citizens if the method of notice dissemination changes. The bill would allow local officials to phase-in new legal notice protocols until January 1, 2025.

A more detailed description of the bill follows.

Now, the officials in local units of government must publish legal notices in daily and weekly newspapers whose readership extends to their residents. House Bill 4183 (H-2) describes other electronic options to ensure that legal notices remain widely accessible to the public.

Under the bill, beginning January 1, 2025, a local government required to provide public notice would do so in the following ways:

- A ***tier A*** public notice would be posted on the 'active notice portion' of a website for 30 days.
- A ***tier A public notice with a link*** would be posted on the 'active notice portion' of a website for 30 days with a link to the full document.
- A ***tier B public notice*** would be posted on the 'active notice portion' of a website for 14 days.
- A ***tier B public notice with a link*** would be posted on the 'active notice portion' of a website for 14 days with a link to the full document.
- A ***tier C public notice*** would be posted on the 'active notice portion' of the website for 14 days.

In addition, a printed copy of the notice would be made available for public inspection by the local government for the duration of time that the notice was required.

During the next 10 years, as the bill describes in considerable detail, there would be two voluntary multi-year phase-in periods to enable local officials to post their Tier A, B, and C legal notices both in print and electronically on websites. The first phase-in period (four years) would begin on January 1, 2016, and extend to December 31, 2019, while the second (five years) would begin on January 1, 2020, and extend to December 31, 2024. Generally, during the phase-in period, the frequency of print publication would diminish as the frequency of electronic publication via a local government's website increased. Throughout both phases, a printed copy of each notice would have to be made available for public inspection.

Local Election. Under House Bill 4183 (H-2), if 10 percent of electors sign a petition asking them to do so, local officials must submit to electors at the next general November election the question of requiring that public notices be provided in a newspaper for five years. If a majority votes to require newspaper publication for five years, the bill describes in detail how Tier A, B, and C legal notices would be published in print, requiring

summaries of linked documents, as well as making the full documents available for public inspection.

Media Outlet Contracts. House Bill 4183 (H-2) would also allow local government officials to provide public notice by entering into contracts with "local media outlets"—defined to mean a television station or radio broadcast station licensed by the Federal Communications Commission—and describes how legal notices would be published on their websites, as well as requiring, at least once each day during peak listening or viewing hours, a general broadcast or transmission indicating that public notices may be found on the website.

Outside Entity Contracts. The bill specifies that if a local government entered into a contract with an outside entity to host and provide public notices, then that entity's website would meet the requirements of the act. Further, if the local government had a website, it would be required to provide a link on its homepage to the 'active notice portion' of the outside entity's website.

Free and Accessible. Under the bill, a website used for posting public notices under the act would have to meet both of the following requirements:

- Access to the homepage of the website and the portion of the website containing active notices and archival notices would have to be publicly accessible and free.
- The homepage would have to include a prominently displayed link to the active notices and the archival notices.

Online Archives. House Bill 4183 (H-2) specifies that beginning January 1, 2016, and not later than December 31, 2024, if a local government posted a public notice on its website, it would be required to create an online archive for public notices. In addition, a printed copy of each public notice would have to be maintained, for not less than five years, in a format that included dates of posting, for archival and verification purposes.

Beginning January 1, 2025, each local government would be required to create an online archive for public notices. Under the bill, a notice posted on a website would have to be maintained on the 'active notice portion' of the website for the duration the notice was required to be posted. After that time, the notice would have to be maintained for at least five years.

In addition, those who operated a publication that qualified as a newspaper (to include websites, under certain circumstances) would be required to maintain a permanent and complete printed copy of each published edition for archival and verification purposes. Those operating newspapers and local media outlets would also have to create—on the first day a notice was posted on the website—a printed copy of any notice, in a format that included the date of posting. That printed copy would have to be maintained for archival and verification purposes.

Permanent Public Notice List & Mailing of Notices. House Bill 4183 (H-2) would require a local government or other governmental entity to create and maintain a permanent public notice list. Then, a person, organization, firm or corporation could, upon request, receive—by first-class mail or electronic mail—any public notice published or posted. If the notices were mailed, a yearly fee could be charged (not to exceed the cost of printing and postage). If the notices were e-mailed, they would have to be transmitted within 24-hours of being posted.

Notice of Change for Citizens. House Bill 4183 (H-2) requires that if a local government changed the method by which public notice was published or posted, then it would be required to provide public notice of that change to the citizens, using its most recent publication method.

Copy of Public Notice to Newspaper. The bill specifies that if newspaper publication of a public notice was *not* required, then the local governmental unit would be required—at no charge and within 24-hours—to provide a copy of the public notice to a newspaper in the area, either by first-class mail or by electronic mail.

BACKGROUND INFORMATION:

Substantially similar legislation—House Bill 5560—passed the Michigan House of Representatives in the 2013-2014 legislative session by a vote of 62 to 47. The bill died in the Senate Committee on Government Operations.

ARGUMENTS:

For:

Representatives of the organizations that represent local officials argue that the publication of legal notices in weekly and daily newspapers—to ensure compliance with hundreds of state statutes—costs taxpayers thousands of dollars each year. If legal notices could be distributed electronically, via an Internet posting, publication costs could be substantially reduced. Further, the Michigan Association of County Treasurers notes that House Bill 4183 will reduce inconsistencies in state law relating to public notice.

Those who favor the bill note that the electronic dissemination of legal notices recognizes the new ways that many younger citizens learn information about their communities—by visiting the websites of their local village, city, township, or county. Electronic dissemination of public notices is the only way these citizens will learn about civic events, since they do not read newspapers.

Proponents of the bill note that the shift from newspaper publishing to Internet posting that is proposed by House Bill 4183 would occur during a nine-year period, allowing smaller units of government in rural areas to phase-in the new legal notice distribution requirements.

Other proponents, notably representatives of broadcasters, say that the bill provides for competition for the posting of government notices by eliminating the current antiquated single-source (newspaper) requirements, and allowing for other more cost-effective means of providing government transparency through public notices and announcements. They say some communities are no longer served by newspapers and that some newspaper websites charge for access. Consequently, the public relies now on radio and television broadcasters' websites for public announcements, such as school closings and emergency messages, so allowing these sites to become the source of public legal notices makes sense.

Against:

Opponents of the bill—mainly weekly newspaper publishers—argue that beyond the matter of the revenue they will lose under this proposal if legal notices are only posted online, their chief concern about the bill is lost accountability of local governments.

Press representatives have pointed out that a significant proportion of the public continues to read newspapers; that the amount of money spent by local units publishing important public notices is small compared to the benefit of transparent government and an informed citizenry, particularly when compared with the amounts spent on less important activities; and that allowing local units ultimately to post notices only on government websites could lead, in some circumstances, to the "fox guarding the henhouse."

Historically, independent newspaper publishers have held local officials accountable for sound policy and ethical behavior, sometimes launching investigations when information is withheld or conflicts of interest become apparent. If the role of newspapers is diminished, citizens will be denied opportunities to learn about government policy and programs, while editors and reporters will be denied information that alerts them to the need for strict oversight and careful reporting.

Further, opponents note that newspapers document a community's historical events by maintaining an archive of public notices. Often, that newspaper archive—spanning scores, even hundreds of years—is the single surviving record of public works and community development. The archive is tangible, clear, comprehensive, and immediately accessible. In contrast, electronic archives are sometimes unorganized and incomplete, generally unmanned, and the retrieval of information is both unreliable and difficult. What's more, the retrieval of documents grows more uncertain with the passage of time, as software evolves, hardware is redesigned, and the older versions of documents are no longer "readable" by more advanced computer systems.

POSITIONS:

The Michigan Townships Association supports the bill. (3-11-15)

The Michigan Association of Counties supports the bill. (3-11-15)

The Michigan Municipal League supports the bill. (3-11-15)

The Michigan Association of County Treasurers supports the bill. (3-4-15)

The Michigan Association of County Clerks supports the bill. (3-4-15)

The Michigan Association of Broadcasters supports the bill. (3-4-15)

The following broadcast media companies and organizations support the bill:

iHeart Media WOOD AM-FM, Lenawee Broadcasting Company, Midwestern Broadcasting Company, Liggett Communications, WSYM Fox 47 Lansing Journal Broadcasting, WBKB-TV/11, WBUP-TV/10, WBUP-TV/5, TBC Sports, Jackson Radio Works, Inc., Mitten Media LLC, Lanser Broadcasting, Handyman Productions, E.W. Scripps/WXYZ-TV Detroit, WPBN/WTOM TV, WCTU-WETQ TV, and WKZO.

The following media companies and organizations oppose the bill:

MLive Media Group, the Michigan Press Association, the Teamsters, View Newspapers, the Michigan AFL-CIO, and the Detroit Legal News and Public Notice Resource Center.

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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.