

PUBLIC NOTICE BILL WOULD END PUBLICATION

WEB MEMO #2

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IN BRIEF

Bill on Public Notice Seeks to End Publication in Major Tennessee County.

Senate Bill 115 and House Bill 284 create a pilot project in Knox County to allow legal notices to be posted on the Internet rather than in a newspaper. This paper examines many of the important principles that this idea violates, and questions the need for this legislation. We hope this analysis is helpful to your research.

SB1066 / HB1155 – EXPAND STATE GOVERNMENT NEW ROLE FOR SECRETARY OF STATE

The Purpose of Public Notices

The policy of publishing public notices is built upon an important principle behind our Constitution and state law – that is, if the government intends to take some action that will limit or change our rights, or that may take our property, then government must go out and seek to provide public notice to the community.

Premise of the Bill is a Red Herring

The stated premise of the bill, to allow legal notices to be posted on the Internet is a red herring because a local government simply does not need permission from the Tennessee General Assembly to post public notices up on a website.

Bill Harms Democratic Process – Creates Less Informed Citizenry – Saves Little.

It is always important to not only think about the immediate effects of a policy, saving a little money in a tight budget year, but to consider the end effects of any act or policy – in this case, a less informed citizenry because too few will ever seek to browse through mundane public notices on a website and many citizens still have not internet access. The fiscal note on the bill claims that the bill will save less than \$50,000 per year when fully implemented but at what cost to citizens that are unaware of an annexation, zoning change, tax increase or important public meeting?

Lack of Internet Access a Problem in Tennessee

Many still lack internet access in Tennessee. Studies show that 57% of adults over the age of 65 do not use the Internet. 52% of Hispanics do not use the Internet. 49% of African Americans do not use the Internet. Among non high school graduates, only 25% use the internet, and less than 50% of people that have only graduated from high school have access. Not only does internet only posting exclude many people from viewing public notices but many of the excluded people are vulnerable members of society. It is

BILL

[SB115](#) / [HB284](#)

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simply not reasonable to expect that any of these people would know when a public notice vital to their interests should be sought.

Hypothetical Reasonable Person Doctrine vs Reasonable Government

Currently, public notice requirements operate in a way that provides for reasonableness in government relations with citizens. When government intends to take some action that will alter rights, or laws, or property rights government provides notice in the community through community newspaper publication of the intended action. This is because the community cannot be reasonably expected to know when to seek information from the government to learn what actions may be taken.

This bill reverses this concept and places the onus on the citizen to seek public notices, by internet or by visiting a government office, rather than by using the historically successful means of community publication.

However, how is a reasonable person to know when he or she should seek to retrieve a notice? The maxim of the hypothetical reasonable person states that a reasonable person behaves in a way that is legally appropriate - a reasonable person will behave in a way that protects their own interests or their rights. A zoning change, annexation, tax increase, or even an election holds some interest for the reasonable person.

However, how does a reasonable person even know when to seek the information that may be of interest to him or her? Is it reasonable to blame the citizen for not seeking a government website to read over the various public notices? We must conclude that reasonably, citizens cannot know when an event requiring their attention will occur.

That is why government has for generations been held to the same maxim of reasonableness. Publication is in the community where all can see the notice and where community dialog is encouraged.

Bill Violates the Legal Doctrine of Constructive Notice.

The legal canon called constructive notice calls for the publication of a public notice three times – that has always been interpreted to be in a newspaper of general circulation. Courts allow constructive notice as a relief from liability for any claim of ignorance of an action. I.e. Should a debtor willfully avoid notice by not opening his or her mail or claiming that they never received a notice the maxim of constructive notice provides protection for the entity that sought to take the citizen's rights. Publication is allowed by courts as legal proof that notice of an action was provided to the individual and or to the community. Posting on the internet only clearly violates the Constructive Notice standard.

Publication in the Community Forgoes Ethical and Legal Questions.

Currently citizens do not have to bicker with government over the publication of public notices in the Community. Newspaper publication provides proof to each side that a notice was published in an appropriate newspaper of general circulation in a timely fashion with accurate information or there is proof that it was not. For the government to take over this responsibility lays the process open to ethical and legal questions over the posting, accuracy, timeliness and even criticism over the location and appearance of the notices on the government web site. Citizens should not have to suffer with the variety of ethical and legal problems this bill stands to create.

Bill Expands Local Government – Fiscal Note is Not Realistic.

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note on the bill claims that there will be no expense to the county for the implementation of this bill. Newspaper employees take care to make sure that public notice is accurate before printing, that notices are archived and that a legal affidavit is always produced and available to prove publication of public notices. The county government's idea to create and maintain a searchable website for public notices is not a simple one. Public notices have intricate legalities that must be seen to in order to avoid liability. The fiscal note on the bill does not take into account website fabrication, server storage, or a worker to ensure that the notices and publication meets the law.

Necessity for Subsequent and Broader Legislation?

Besides the obvious question of why this bill is this necessary, many other questions remain. Whose legal responsibility is it to ensure that notices are posted in timely fashion, with accurate information and that they are archived for any possible legal actions? What is the penalty should government employees become lax and no notice is posted? Will failure to post, incomplete, or inaccurate information negate any actions? Traditionally, unless otherwise stated, failure to follow any statute proscribed in state law that does not call for a penalty is an automatic misdemeanor. Is this bill criminalizing a procedure that has worked well in Tennessee?

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[Full Bill Summary](#) SB0115 / HB284

This bill creates a pilot project in Knox County to allow legal notices be posted on the Internet rather than in a newspaper.

This bill authorizes any government agency to publish on an official government notice Web site, instead of in a newspaper, any legal notice that is required under present law to be published in a newspaper, as long as all of the following requirements are met:

- (1) The site is accessible to the public over the internet at least 90 percent of the time, 24 hours a day, every day of the year;
- (2) The government agency's official Web site must prominently display a link to the notice Web site with full text of all current legal notices; and
- (3) Each page must contain contact information and list complaints.

A notice must be provided free of charge to persons without internet access.

Notices must remain available on the notice Web site at least until the last posting date required by law has expired or until the event described in a notice has taken place, whichever is later.

The government agency adequate record keeping.

[Bill Text](#)
[Fiscal Note](#)

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