

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1495

Bill Subtitle: TO SAVE GOVERNMENT MONEY; AND TO CREATE AN INTERNET PUBLIC NOTICE CALENDAR TO BE VIEWED BY ALL PERSONS FREE OF CHARGE.

Basic Change :

Representative Hammer

The proposal creates the Arkansas Public Notice Act of 2013 to allow for internet publication of required public notices. A web site based searchable public notice calendar would be created by the Arkansas Secretary of State who would establish standards and criteria for governmental entities required by law to publish public notices. Various Arkansas code sections that currently require public notification through newspaper publications are amended to reflect the Arkansas Public Notice Act of 2013 and the authority to publish through the internet based public notice calendar.

The proposal would be effective if House Joint Resolution 1007 of the Regular Session of the Eighty-Ninth General Assembly, which concerns allowing the General Assembly to determine the manner of publishing notices, is approved by the vote of the people at the next general election and on and after the date that HJR 1007 becomes effective.

Revenue Impact :

None

Taxpayer Impact :

Taxpayers will be able to access public notices through the public notice calendar website.

Resources Required :

None.

Time Required :

None

Procedural Changes :

Under current law, a city or county must provide proof of publication to DFA for the election results to levy a local sales and use tax. Procedures would need to be developed for the city or county to provide a proof of publication via the Secretary of State's website if that option is chosen by the city or county.

Other Comments :

None

Legal Analysis :

HB1495 creates the Arkansas Public Notice Act of 2013. HB1488 and HB1494 contain identical provisions creating the Act. However, HB1495 alone contains a contingency clause that will allow this bill to go into effect only if the associated HJR1007 proposing a constitutional amendment to allow the General Assembly to determine the manner of publishing certain notices, is passed by both the General Assembly and the people. HB1494 changes the publication and notices for constitutionally governed disclosures prior to various elections and bonding procedures.

The act provides for the Secretary of State (SOS) to establish a method for government entities, both state and local, to provide public notice on a website to be created by the SOS, including a section in calendar format. A government entity that is required to publish notices to the public could elect to publish the notice in a legal newspaper or general circulation newspaper, or on the public notice

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calendar created by the SOS. The bill does not address access to public notices for those without access to the internet when publication is made only on the website.

The SOS may set a fee for publication on its website. Revenues generated from the fee are cash funds to be used by the SOS. It is unclear whether the SOS will pay for the necessary storage and upkeep of the electronic database from the fees. Because this bill envisions all levels of government utilizing the web database, displayed in either calendar or searchable form, the data storage could be significant.

It is unclear how long these records will be maintained by the SOS. The Arkansas Record Retention law, Act 918 of 2005, codified at Ark. Code Ann. § 25-18-601 et seq., expressly excludes Constitutional Officers from being covered by its provisions. There is no legal duty under the record retention law for the SOS to retain these records.

The options created by HB1495 would allow a government entity to publish notice on the website or publish notice in a newspaper. The bill requires only one newspaper publication per week in the time period specified instead of daily notices.

In addition to creating the Public Notice Act, HB 1495 amends selected sections of Titles 9, 14, 15, and 26 that require publication of various notices in a newspaper to repeal the requirement for publication in a newspaper and substitute publication under the act created by the bill, which allows the entity that is required to publish the notice to elect publication by newspaper or on the SOS website. Some of the requirements for publication that are amended in HB 1495 are notices concerning the sale and issuance of bonds. Others concern notices related to election procedure. In some cases the time for the publication and the length of time publication is required are changed by the amendment.

The sections in Title 26 that are amended are those in Chapters 74 and 75 concerning notices of issuance of bonds, notices of election results (including the proclamation) related to a sales and use tax levied by a city or county. All of the amendments to sections in Title 26 simply repeal the requirement for publication in a newspaper and substitute publication under the act created by the bill and do not make any other changes such as those regarding the time for publication or the length of time publication is required.