



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE STUDY COMMITTEE ON PUBLICATION OF GOVERNMENT DOCUMENTS AND LEGAL NOTICES

FROM: Scott Grosz, Principal Attorney, and Steve McCarthy, Staff Attorney

RE: Options for Committee Recommendations

DATE: October 3, 2016

The Joint Legislative Council created the Study Committee on Publication of Government Documents and Legal Notices to conduct the following activities:

- Update and recodify chs. 35 and 985, Stats., relating to the publication and distribution of government documents and legal notices, to reflect technological advances and remove obsolete provisions.
- Study whether, and in what circumstances, current law regarding the publication and distribution of government documents and legal notices, including qualifications for official newspapers, should be modified to allow for information to be made available only electronically or through nontraditional media outlets.

The goal of any study committee is to compile available information and apply the expertise of committee members in determining whether changes to the law, within the scope of the committee's charge, should be recommended for enactment during the following legislative session. If the committee identifies changes to recommend, committee staff, working at the direction of the chairperson of the committee, prepare draft legislation to accomplish these changes.

At the July 26 and August 30, 2016 meetings, committee members offered various options for potential legislation. This Memo summarizes these options and provides additional detail and structure for continued discussion.

MUNICIPALITY INTERNET SITE NAVIGATION STANDARDS

Background

2015 Wisconsin Act 79 allows municipalities that have not designated an official newspaper, and are thus eligible to elect to post notices in three public places in lieu of newspaper publication, the option to have notices “posted in at least one public place likely to give notice to persons affected and placed electronically on an Internet site maintained by the municipality.” [s. 985.02 (2) (a), Stats.]

However, the statute does not prescribe any minimum requirements or give any guidance as to how or where a notice must be placed on a municipality’s Internet site.

Options

During both the July 26 and August 30, 2016 meetings, committee members suggested that standards could be added to Wisconsin law to require a municipality to satisfy minimum Internet site navigation requirements for permissive electronic postings in order to provide more clear and direct access to notices. These standards could include one of the following:

- Requiring notices to be posted directly on a municipality’s Internet site home page.
- Requiring a municipality’s Internet site home page to include an easily identifiable link to all public notices posted on the Internet site.

Language could also be added to the law to specify how long a municipality must keep the notice accessible on its Internet site.

CONTENT OF MANDATORY PUBLISHED NOTICES

Background

Generally speaking, a municipality that either is not required to designate an official newspaper or has exercised the option not to designate an official newspaper may post notices in either three public places or one public place and on the municipality’s Internet site rather than publish them. However, the statutes identify a number of types of notices that all municipalities **must** publish in a newspaper.

Examples of the types of mandatory published notices include notice for board of review proceedings and appearance requirements, notice of certain types of local ordinances or bylaws, and notice of the proceedings of a local governing body meeting.

The required content of these mandatory published notices varies. Some types of notices, such as the board of review appearance requirements, must be published in the newspaper with complete substantive content. Other mandatory subjects of publication, such as a notice of local ordinance or bylaw, may be published as a summary of proceedings and a referral as to where a person may obtain complete information.

Options

During the August 30, 2016 meeting, committee members discussed the expense local governments incur for mandatory published notices. For public notices that require lengthy substantive content or substantial summary material, committee members suggested an option that would permit a local government to publish a brief public notice that makes a reader aware that substantive material may be viewed electronically at the local government's Internet site.

For example, s. 70.47 (2), Stats., requires all boards of review to publish a Class 1 notice of the time and place of the first meeting of the board and a lengthy list of appearance and procedure requirements. The statute could be modified to require that a board of review notice must only contain the time and place of the first meeting of the board and information as to where the full text of board appearance requirements can be found.

Another example of a type of mandatory published notice that could be altered is found in s. 60.77, Stats. The statute requires a town sanitary district commission to publish an issued rule or order either in its entirety as a Class 1 notice under ch. 985, Stats., or as a notice that includes a summary of the subject matter and main points of the ordinance, rule, or order and information as to where the full text of the ordinance, rule, or order may be obtained. This statute, and similar statutes, could be revised to remove the requirement that a summary of the subject matter and main points of the ordinance, rule, or order be included in the published notice. Under this option, the content of the mandatory published notice could be shortened to only require a number, title, date, and information as to where the full text of the ordinance, rule, or order may be obtained.

ELECTRONIC PUBLICATION OF CLASS 2 AND 3 NOTICES

Background

Under current law, publication of a legal notice may be prescribed as a Class 1, 2, or 3 notice, where the class of notice corresponds to the frequency of required insertions. For example, a Class 2 notice must be published once a week for two consecutive weeks and a Class 3 notice must be published once a week for three consecutive weeks. Generally, when multiple insertions are prescribed, the last insertion must occur at least one week before the act or event to which the notice relates. [ss. 985.01 (1m) and 985.07, Stats.]

Options

During the August 30, 2016 meeting, committee members suggested the modification of the insertion requirements relating to Class 2 and Class 3 notices to allow a local government the option to publish a summary and reference to a local government website, instead of any full text content that may be required under current law, for the 2nd and 3rd insertions that are required for publication of Class 2 and 3 notices. As the committee discussed, the content requirements would not be modified for Class 1 notices or for the first insertion of a Class 2 or Class 3 notice.

PERMISSIVE ELECTRONIC PUBLICATION

Background

Generally, s. 985.02 (1), Stats., requires local units of government to publish legal notice in a newspaper “likely to give notice in the area or to the person affected.” A newspaper that publishes a legal notice must also place an electronic copy of the notice on the Wisconsin Newspapers Legal Notice website. [s. 985.02 (3), Stats.]

Current law also specifies certain exemptions from the requirement of newspaper publication. Under ss. 985.02 (2) and 985.05 (1), Stats., a municipality that is not required to have an official newspaper may provide notice by physically posting the notice in three places or by physically posting the notice in one place and placing it on the municipality’s Internet site. When a municipality uses this process, it must follow the timelines that would apply if the notice were subject to newspaper publication. However, posted notice under s. 985.05 (1), Stats., may not substitute for newspaper publication for notice of certain proceedings and events, including: tax redemptions or sales of land acquired for delinquent taxes, charges, or assessments; civil annexation; detachments; consolidations or incorporations; legal notices directed to specific individuals; school board elections; and town ordinances imposing forfeitures.

In addition to the general exemption under s. 985.05 (1), Stats., municipalities have exemptions from the requirement of newspaper publication for notices related to municipal lists of individuals interested in zoning and ordinance information. Instead, current law allows for these notices to be provided either by newspaper publication, electronic posting on a municipality’s Internet site, or other methods. [See ss. 59.69 (5) (f), 60.61 (4) (f), 62.23 (7) (d) 4., and 66.1001 (4) (f), Stats.]

Options

During the August 30, 2016 meeting, committee members suggested consideration of options to expand local government authority to substitute electronic posting for newspaper publication. Numerous questions about the scope of such options provide discussion points for committee members, including:

- Should an option for electronic posting be authorized for any type of legal notice?
- If not, should the option for electronic posting apply to notices for general classes of events and proceedings or should it apply to notices for particular events and proceedings?
- Should an option for electronic posting have a time component, similar to the time requirements of Class 1 to 3 notices?
- What entity should be responsible for maintaining the infrastructure necessary for electronic posting of notices? Should it be administered at the state level? At the local level? Privately contracted at the state or local level? If contracted, should recommended legislation include guidance on fees that may be charged?

- What security requirements, if any, should apply to a website that is used to provide electronic posting of notices?
- Should any specific guidance be provided regarding retention of electronic postings, beyond the application of current public records law?
- How should the option for electronic posting relate to requirements for physical posting? Should physical posting accompany new options for electronic posting? Alternatively, should existing requirements for physical posting be repealed?

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