

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 804 Session of 2011

INTRODUCED BY ROBBINS, COSTA, ERICKSON, FERLO, FOLMER, FONTANA,
ORIE, PICCOLA AND SMUCKER, MARCH 8, 2011

REFERRED TO LOCAL GOVERNMENT, MARCH 8, 2011

AN ACT

1 Amending Title 45 (Legal Notices) of the Pennsylvania
2 Consolidated Statutes, further providing for additional
3 publication in legal journals; and providing for electronic
4 publication of legal advertising.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 308(a) of Title 45 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 308. Additional publication in legal journals.

10 (a) General rule.--Except as otherwise provided by statute,
11 every notice or advertisement required by law or rule of court
12 to be published in one or more newspapers of general circulation
13 or permitted by section 403 (relating to authorization) to be
14 electronically published, unless dispensed with by special order
15 of court, shall also be published in the legal newspaper, issued
16 at least weekly, in the county, designated by rules of court for
17 the publication of court or other legal notices, if such
18 newspaper exists. Publication in such legal newspaper shall be
19 made as often as required to be made in such newspapers in

1 general circulation, and shall be subject to the same
2 stipulations and regulations as those imposed for the like
3 services upon all newspapers.

4 * * *

5 Section 2. Title 45 is amended by adding a chapter to read:

6 CHAPTER 4

7 ELECTRONIC PUBLICATION OF LEGAL ADVERTISING

8 Sec.

9 401. Scope of chapter.

10 402. Definitions.

11 403. Authorization.

12 404. Election to electronically publish legal notices.

13 405. Administration.

14 406. Department responsibilities.

15 407. Reporting.

16 408. Regulations.

17 § 401. Scope of chapter.

18 This chapter relates to public notice modernization.

19 § 402. Definitions.

20 The following words and phrases when used in this chapter
21 shall have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

23 "Center." The Governor's Center for Local Government
24 Services within the Department of Community and Economic
25 Development.

26 "Department." The Department of Community and Economic
27 Development of the Commonwealth.

28 "Electronic publication" or "electronically publish." The
29 public advertisement of a legal notice in hypertext markup
30 language (HTML) format, or an equivalent language format, on an

official Internet website in accordance with this chapter.

"Government unit." Any municipality, school district, local authority or council of government or similar intergovernmental cooperative entity.

"Legal notice" or "notice." A notice, advertisement, publication, statement or report or an abstract of a notice, advertisement, publication, statement or report required by law, rule or regulation to be published in a newspaper relating to any of the following:

(1) A meeting of the governing body of the government unit or its committees.

(2) An ordinance or resolution.

(3) A budget, auditor's report or financial statement.

(4) A contract, agreement, request for bids or proposals or other documentation related to the procurement of supplies, services or construction.

(5) A sale of real or personal property, including property sold for municipal taxes or claims.

(6) A proceeding requiring public notice in accordance with the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.

(7) A proceeding requiring public notice in accordance with applicable laws governing zoning or subdivision and land development in municipalities not subject to the Pennsylvania Municipalities Planning Code.

"Notice website." An official Internet website or other Internet website that is maintained by a government unit or by a third party under contract with the government unit that contains links to the legal notices designated for electronic publication by the government unit.

1 "Official Internet website" or "official website." The
2 official Internet location designated by a government unit as
3 its primary source of information about the government unit.

4 "Ordinance." A legislative enactment of a municipality.

5 "Resolution." A legislative enactment of a government unit
6 other than a municipality.

7 § 403. Authorization.

8 (a) General rule.--In accordance with the provisions of this
9 chapter, a government unit which publishes notices and
10 advertisements consistent with section 308 (relating to
11 additional publication in legal journals) shall have the
12 authority to electronically publish legal notices in lieu of
13 newspaper advertisements required under Chapter 3 (relating to
14 legal advertising) or any other law.

15 (b) Effect of electronic publication.--Electronic
16 publication in accordance with this chapter shall substitute for
17 and satisfy the requirements for publication of legal notice in
18 newspapers of general circulation by a government unit imposed
19 by any provision of law.

20 § 404. Election to electronically publish legal notices.

21 (a) Ordinance or resolution.--A government unit may enact an
22 ordinance or adopt a resolution to elect to electronically
23 publish legal notices in accordance with this chapter. The
24 ordinance or resolution shall be adopted prior to electronic
25 publication.

26 (b) Specification of notices.--The ordinance or resolution
27 adopted under subsection (a) shall specify which type of legal
28 notices will be subject to electronic publication under this
29 chapter.

30 (c) Center.--Within 90 days of the enactment of an ordinance

1 or resolution under subsection (a), the government unit shall
2 furnish the center a copy of the ordinance or resolution and all
3 official Internet website addresses applicable to the electronic
4 publication of legal notices. Notice to the center shall include
5 a one-time \$100 fee to assist the center to create the list
6 under section 406(a) (relating to department responsibilities).

7 (d) Newspaper publication.--

8 (1) Following adoption of an ordinance or resolution
9 under subsection (a), and prior to electronically publishing
10 any legal notices, the government unit shall publish a legal
11 advertisement once a week for four successive weeks in one or
12 more newspapers of general circulation within the
13 jurisdiction of the government unit, announcing that certain
14 legal notices will in the future be posted on the government
15 unit's notice website in the following form:

16 Internet Posting of Public Notices: (name of government
17 unit).

18 The (name of government unit) announces that legal
19 notices on the following matters, effective (insert
20 date), shall no longer be advertised by newspaper
21 publication but shall be posted on (Internet address for
22 the notice website or the notice website of the county in
23 which the government unit is located, if necessary). The
24 following types of notices shall be subject to electronic
25 publication: (the advertisement shall then list the legal
26 notices that the government unit's governing body has
27 elected to publish electronically).

28 Free public access to the Internet is available at
29 (list locations within, adjacent to or accessible to the
30 government unit).

1 If someone is unable to access the Internet,
2 individual copies of notices can be obtained at the (name
3 of government unit) at (address) or by calling (insert
4 appropriate government unit phone number).

5 (2) If, after a good faith attempt to comply with the
6 newspaper publication requirement of paragraph (1), the
7 government unit fails to obtain publication of the notice
8 required by this subsection in any newspaper of general
9 circulation within the jurisdiction of the government unit,
10 the government unit may publish the required notice at least
11 once in the legal journal of a county within which the
12 government unit is located and shall post the required notice
13 on its official Internet website or notice website and at the
14 principal office of the government unit.

15 (e) Additional advertisement.--In addition to the newspaper
16 publication required by subsection (d), a government unit may,
17 from time to time, advertise by newspaper or other means the
18 fact that it is electronically publishing specific legal notices
19 as identified in the advertisement.

20 § 405. Administration.

21 A government unit which has elected to provide electronic
22 publication of legal notices shall comply with all of the
23 following requirements:

24 (1) Prior to electronically publishing notices, a
25 government unit or a contractor providing the notice website
26 shall enter into a service agreement with an Internet service
27 provider that guarantees the website is accessible to the
28 public over the Internet at least 98% of the time, 24 hours a
29 day, 365 days a year.

30 (2) All notices electronically published shall be

1 available for review in printed form in the appropriate
2 office of the government unit. The government unit shall
3 provide a copy of the notice to any individual upon written
4 or oral request. The notice shall be provided at a cost not
5 to exceed the cost established under section 1307(b) of the
6 act of February 14, 2008 (P.L.6, No.3), known as the Right-
7 to-Know Law.

8 (3) A government unit's official Internet website shall
9 prominently display the link to any other notice website. The
10 notice website shall include an indexed web page containing a
11 list of all current electronically published notices of the
12 government unit, with links to the full text of those
13 notices. The index web page shall also contain a search
14 function and may contain other features that improve public
15 accessibility to electronically published notices. If a
16 government unit does not have an official Internet website,
17 the county in which the government unit is located may agree,
18 under terms and conditions as the county may require, to
19 provide space on the Internet website of the county necessary
20 to serve as the government unit's notice website for purposes
21 of this chapter. If the county provides space on its Internet
22 website, the publication required by section 404 (relating to
23 election to electronically publish legal notices) shall
24 include the county's official Internet website address.

25 (4) (i) An e-mail address of the government unit shall
26 be displayed on any website on which its legal notices
27 are provided and on each page of any official Internet
28 website that contains a link to each notice website or
29 index page of any notice website.

30 (ii) The government unit shall review all complaints

1 reported under paragraph (1) to determine the cause of
2 any access problem and shall document the findings and
3 any action taken to resolve it.

4 (iii) The government unit shall keep and make
5 available for public inspection all records of complaints
6 and service accessibility failures reported under
7 paragraph (1). The records shall also be filed with the
8 center.

9 (iv) The government unit shall ensure that all
10 website and e-mail addresses required by this chapter are
11 updated when a change occurs.

12 (5) (i) Electronic publication shall first be made on
13 any date permitted by law for the initial printed
14 publication of the legal notice and shall remain
15 electronically published at least until the last date
16 that printed publication could be made in accordance with
17 law.

18 (ii) Electronic publication for the period specified
19 under subparagraph (i) shall be sufficient for purposes
20 of certification of publication under paragraph (8).

21 (iii) A government unit that electronically
22 publishes a notice for the period under subparagraph (i)
23 may do any of the following:

24 (A) Continue to electronically publish the
25 notice for up to 180 days after the last date for
26 publication under subparagraph (i).

27 (B) Provide for the printed publication of the
28 notice in a newspaper.

29 (6) All legal notices electronically published by a
30 government unit under this chapter shall be mailed by first

1 class mail, or facsimile, to one or more newspapers of
2 general circulation no later than the date the notice is
3 posted on the notice website. The newspaper may use the
4 notice for research, for monitoring or to print as a public
5 service at no charge to the government unit.

6 (7) A government unit that elects to provide electronic
7 publication of legal notices shall establish a system to
8 provide e-mail notification to individuals who register with
9 the government unit to receive e-mail notification.

10 (8) The government unit shall provide written
11 certification that the legal notice was electronically
12 published for the period required under paragraph (5)(i) and
13 the time, place, character of notice and beginning and ending
14 dates of the continuous electronic publication of the legal
15 notice. The certification shall be a printed or written
16 statement, identifying the Internet website on which the
17 legal notice was posted. A copy of the legal notice, exactly
18 as electronically published, and copies of notifications
19 under paragraph (7) shall be attached to the certification.
20 The certification shall also state that the time, place,
21 character of notice and dates are true. The certification
22 shall be signed by an official or employee of the government
23 unit responsible for electronically published legal notices
24 and an agent of the notice website contractor, if applicable.
25 The certification shall constitute a public record as defined
26 in the act of February 14, 2008 (P.L.6, No.3), known as the
27 Right-to-Know Law. The completed certification shall
28 constitute proof of publication for compliance with legal
29 notice requirements by a government unit in accordance with
30 this chapter or any other provision of law. Proof of

1 publication may be rebutted by clear and convincing evidence
2 establishing that the legal notice was not electronically
3 published as set forth in the certification.

4 (9) The government unit shall maintain a copy of each
5 legal notice, certifications of legal notices, electronic
6 transmissions required by paragraph (7) and facsimile
7 transmission reports in accordance with standards relating to
8 records retention established pursuant to law, regulation,
9 policy or other directive.

10 § 406. Department responsibilities.

11 (a) List of government units.--Within six months of the
12 effective date of this section, the center shall create and
13 maintain a list of the names and Internet websites of all
14 government units for which it has received a copy of an
15 ordinance or resolution to permit electronic publication of
16 legal notices under this chapter in accordance with section 404
17 (relating to election to electronically publish legal notices).
18 The list shall be accessible through the department's Internet
19 website and may be organized to correspond with any existing
20 database the center may maintain. The list shall contain links
21 to the government units' official Internet websites.

22 (b) Failure to comply.--Notwithstanding any other provision
23 of law, the failure of a government unit to provide notice to
24 the center under subsection (a) shall not invalidate any action
25 for which electronic publication has been made.

26 § 407. Reporting.

27 The department shall prepare a report on the use of this
28 chapter 12 months after the effective date of this chapter, and
29 biannually thereafter. The report shall be posted on the
30 department's Internet website. Notification of the report's

1 publication shall be provided to the President pro tempore of
2 the Senate, the Majority Leader of the Senate, the Minority
3 Leader of the Senate, the chairman and minority chairman of the
4 Local Government Committee of the Senate, the Speaker of the
5 House of Representatives, the Majority Leader of the House of
6 Representatives, the Minority Leader of the House of
7 Representatives and the chairman and the minority chairman of
8 the Local Government Committee of the House of Representatives.
9 § 408. Regulations.

10 The department shall adopt procedures to verify the
11 publication of legal notices in compliance with this chapter.

12 Section 3. This act shall take effect in 60 days.