

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2095 (Maienschein)
Version: June 10, 2024
Hearing Date: June 25, 2024
Fiscal: No
Urgency: No
AM

SUBJECT

Publication: newspapers of general circulation

DIGEST

This bill requires public notices that are legally required to be printed in a newspaper of general circulation to also be published in the newspaper's internet website or electronic newspaper and on a statewide internet website maintained as a repository for notices by a majority of California newspapers of general circulation. The bill prohibits a newspaper from charging a fee or surcharge specifically to access public notices on their internet website, and provides that the newspaper in which the notice is published is responsible for publishing notices on a statewide internet website.

EXECUTIVE SUMMARY

This bill seeks to provide a framework that maintains the existing requirement of print publication, while requiring online publication of required public notices on a specified website maintained as a repository for notices by a majority of California newspapers of general circulation. The author and sponsor of the bill, the California News Publishers Association (CNPA), state that this bill is a response to efforts around the country and in California that whittle away at different public notice requirements, including changing standards for different entities statutorily required to provide public notice for their transactions. This bill seeks to address these issues by enacting a uniform standard for public notices that will continue to require print publication, but also require online publication in a newspaper's website, if they have one, and a statewide repository created especially for this purpose. This approach will keep public notice with adjudicated papers of record while at the same time modernizing notice requirements for online publications. The author and sponsor argue this will maintain journalistic independence and preserve adjudicated publications as the standard for public trust. No timely opposition was received by this Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that whenever any official advertising, notice, resolution, order, or other matter of any nature whatsoever is required by law to be published in a newspaper, such publication is to be made only in a newspaper of general circulation. (Gov. Code § 6040.)
- 2) Provides that a newspaper qualifies as a newspaper of general circulation if it meets all of the following criteria:
 - a) it is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers and has been established and published at regular intervals of not less than weekly in the city, district, or public notice district for which it is seeking adjudication for at least three years preceding the date of adjudication;
 - b) it has a substantial distribution to paid subscribers in the city, district, or public notice district in which it is seeking adjudication;
 - c) it has maintained a minimum coverage of local or telegraphic news and intelligence of a general character of not less than 25 percent of its total inches during each year of the three-year period; and
 - d) it has only one principal office of publication and that office is in the city, district, or public notice district for which it is seeking adjudication. (Gov. Code § 6008(a)(4).)
- 3) Provides that whenever a newspaper desires to have its standing as a newspaper of general circulation ascertained and established, it may, by its publisher, manager, editor or attorney, file a verified petition in the superior court of the county in which it is established, printed and published, setting forth the facts which justify such action. (Gov. Code § 6020.)
- 4) Provides that all publications made in a newspaper during the period it was adjudged to be a newspaper of general circulation are valid and sufficient. (Gov. Code § 6025.)
- 5) Specifies that whenever any law provides that publication of a notice is required, that notice must be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner provided in that statute.
 - a) Provides that notice includes official advertising, resolutions, orders, or other matter of any nature whatsoever that are required by law to be published in a newspaper of general circulation. (Gov. Code § 6060.)
- 6) Requires public notice in a newspaper of general circulation to notify about a wide range of legal events of interest to the public, including, among others:

- a) public hearings related to matters such as land use, zoning changes, and environmental impact reports. (see Gov. Code § 50485.5 (airport zoning), Health and Saf. Code §33679 (community redevelopment), Health and Saf. § 25242(b)(4) (hazardous waste);
- b) election notices. (see Elec. Code § 9303 (initiative), § 12105 (pre-election notices), § 5200 (disqualification of political parties); § 11022 (notice of intent to recall);
- c) foreclosure notices (Civ. Code § 2924f(b)(2));
- d) lien sale of personal property in self-service storage facilities. (Bus. & Prof. Code § 21707(a)); and
- e) name changes (Code of Civ. Proc. § 1277(a)(2).)

This bill:

- 1) Provides that when any public notice is legally required by a statute, ordinance, bylaw, or judicial order to be published in a newspaper of general circulation, that notice shall be published in and on all of the following:
 - a) the newspaper's print publication;
 - b) the newspaper's internet website or electronic newspaper available on the internet; and
 - c) a statewide internet website maintained as a repository for notices by a majority of California newspapers of general circulation, as described in this article.
 - i. The newspaper in which the notice is published is responsible for publishing notices on a statewide internet website.
- 2) Requires a newspaper publishing a notice that has an internet website operated by that newspaper to also place the notice on its internet website and on a statewide internet website maintained by an entity with the capacity to receive and upload legal notices from the majority of newspapers in this state as a repository for the notices.
 - a) Requires posting on an internet website to begin on the first day of placement on the internet website and is to run continuously until the expiration of the specified time legally required for that type of notice.
 - b) Each notice required to be placed on the newspaper's internet website remains valid if it meets all of the requirements of these provisions, and the legality of the newspaper publication is not to be affected by the failure of the newspaper for any reason to upload legal notice publications to a statewide internet website or to another internet website or to accurately post the notice publication on any internet website.
- 3) Provides that if a newspaper does not maintain its own internet website, publication on a statewide internet website and reference to the statewide internet website in the

print publication notice satisfies the requirement of publication on the newspaper's internet website.

- 4) Provides that an error in the legal notice published on a newspaper's internet website or the statewide internet website that is a result of either (1) an error of the internet website operator, or (2) a temporary internet website outage or service interruption that prevents the publication or display of a legal notice on the internet website does not constitute a defect in publication of the legal notice, so long as the legal notice appears correctly in the newspaper's print publication and satisfies all other legal notice requirements.
 - a) Failure to post or maintain a public notice on the newspaper's internet website or to post a public notice on the statewide public notice internet website does not affect the validity of the public notice.
- 5) Prohibits a newspaper or a statewide repository from charging a fee or surcharge specifically to access public notices on their internet website.
 - a) However a newspaper may continue to charge a fee or surcharge for access to other content on their internet website, including, but not limited to, public notices published by the newspaper, if the newspaper also includes a reasonably accessible link to the statewide internet website on the newspaper's internet website.
 - b) Prohibits a newspaper or statewide repository from charging an additional fee or surcharge for posting to the statewide repository site.
- 6) Makes the following findings and declarations:
 - a) For more than 100 years, the public has relied on newspapers to publish public notices informing our communities about public agency hearings, design reviews, school board budgets, trustee sales, estate administration petitions, fictitious business names, and hundreds of other important legal events of interest to the public.
 - b) Through public notices that appear in legally adjudicated newspapers, the state has reached all corners of California, from sparsely populated rural areas to large urban enclaves.
 - c) Public notices placed in local and ethnic newspapers have informed many diverse communities across the state and ensured access to key information about our state and local governments, citizens, and legal systems.
 - d) As part of expanding public access to public notices, members of the public shall by law gain access to public notices on newspaper internet websites and a statewide internet website, which is maintained as a joint venture of the majority of California newspapers and contains a searchable repository of state and local public notices.

- e) At the same time, it is important to maintain access to public notices for the millions of individuals who rely on newspapers to learn about matters of public interest.
- f) Online delivery of public notices to newspaper internet websites will ensure that Californians who rely on the internet for information will have the opportunity to access public notices, while newspaper delivery of public notices will ensure that the many diverse, local, and elderly readers of newspapers will also have access to this critical public information.

COMMENTS

1. Stated need for the bill

The author writes:

For well over a century, newspapers have been crucial in sharing important public notices. In California, these notices inform people about important legal events like hearings and petitions. This bill aims to update how these notices are shared, ensuring they're accessible both in print and online. By setting up regulations for newspapers to follow and having no extra fees for accessing these notices online, we're ensuring everyone can easily find this vital information. This bill ensures Californians stay informed about what is happening in their communities, whether they prefer reading newspapers or using the internet. Newspapers of general circulation remain the most effective way to convey public notices because they are legally deemed to reach a "substantial" number of readers in the area. This will ensure that transparency is kept within public notices within the state of California.

2. Current issues facing journalism

This Committee held an informational hearing on December 5, 2023 regarding the Importance of Journalism in the Digital Age. The background paper provides an in depth examination of the myriad issues facing journalism today amidst the rise of digital news.¹ Since 2005, the country has lost more than 25 percent of its newspapers, or over 2,500 publications.² Today, Americans consume their news on digital devices rather than in print by a significant margin: according to the Pew Research Center, as of 2022, 49 percent of U.S. adults often, and 33 percent sometimes, got their news from digital devices, while 8 percent of adults often, and 25 percent sometimes, got their

¹ *Importance of Journalism in the Digital Age*, Sen. Jud. Comm. Info. Hearing, Dec. 5, 2023, available at https://sjud.senate.ca.gov/sites/sjud.senate.ca.gov/files/background_paper_-_the_importance_of_journalism_in_the_digital_age_dec_5_2023_sjud_hearing.pdf.

² Abernathy, *The State of Local News 2022*, Northwestern Medill Local News Initiative (Jun. 29, 2022), <https://localnewsinitiative.northwestern.edu/research/state-of-local-news/report/>.

news from print publications.³ The Assembly Judiciary Committee analysis of this bill notes that:

According to information provided by the bill's sponsors, between 2004 and 2019, one in four California publications closed their doors. Then in 2020, the pandemic hit and California publications saw ad revenues drop anywhere from 40-78% while placing content in front of paywalls as a public service, according to a survey of CNPA members. That survey also found that 66% of CNPA members found that digital revenue is still not enough to offset the losses in print advertising.⁴

CNPA writes that:

The news media is in a critical transition. Our members have embraced new delivery models, while maintaining traditional revenue streams that serve our readers. Between 2008 and 2018, there was a national 68% decrease in advertising revenue, and almost two dozen daily papers closing in California in the last five years. Maintaining public notice under current framework with adding online publication of notices will help ensure news publishers can rely on this revenue stream as they contemplate other distribution methods to meet readers where they are.

3. Public Notices

The sponsor of the bill points out that over the last several years, bills have been introduced and enacted that move several historic public notice requirements to either government or private websites. For example, AB 721 (Valencia, Ch. 811; Stats., 2023) repealed, as of January 1, 2027, the requirement that the county superintendent publish notice of the date, time, and location of the scheduled public hearing on the proposed school district budget in a newspaper of general circulation and instead only requires the notice to be published on the website of the school district. The author and sponsor argue that newspapers of general circulation remain the most effective means to convey public notices because they are legally deemed to reach a "substantial" number of readers in the area. The author and sponsor believe this bill modernizes the tradition of public notice by establishing a framework for online publication and mandating its use, while at the same time preserving the traditional requirement of print publication.

Under the bill, public notices that are legally required to be published in a newspaper of general circulation would also be required to be posted to both the newspaper's website, if they have one, and to an online statewide repository. The requirement to post a notice online is the responsibility of the newspaper that the member of the public submits the notice for publication to, so no additional requirements or duties are placed

³ Forman-Katz & Matsa, News Platform Fact Sheet, Pew Research Center (Sept. 20, 2022), <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/>.

⁴ Asm. Jud. Comm. analysis AB 2095 (2023-24 reg. sess.) as amended Mar. 19, 2024 at pp. 5-6.

on the public than they already have under existing law when publishing a notice. The bill contemplates that the online statewide repository will be one website that is operated and maintained by a majority of California newspapers of general circulation. The online statewide repository is to be accessible for no cost and is to be searchable by users. The bill would prohibit a newspaper from charging a fee to specifically access public notices published on their website, but allows them to charge for general access to their online website (commonly known as a paywall) including public notices.

The bill builds in guardrails to ensure any issues related to a notice being published online does not affect the sufficiency of the notice included in a print publication, by providing that the public notice remains valid if it otherwise meets the print publication requirements. If a newspaper does not maintain its own internet website, publication on the online statewide repository and reference to repository's website in the print publication notice will satisfy the requirement of publication on the newspaper's website under the bill.

4. Potential concerns

a. Privacy protection

The California Consumer Privacy Act of 2018 (CCPA) grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. (Civ. Code § 1798.100 et seq.) It places attendant obligations on businesses to respect those rights. In the November 3, 2020, election, voters approved Proposition 24, which established the California Privacy Rights Act of 2020 (CPRA). The CPRA amends the CCPA, limits further amendment, and creates the California Privacy Protection Agency (PPA).

The bill as drafted does not specify the web address for the online statewide repository or who or what entity will establish it and maintain it. The bill merely states that it is a "statewide internet website maintained as a repository for notices by a majority of California newspapers of general circulation." As it is unclear who or what entity will be maintaining this website, it is unclear to Committee staff if the operator of the website would meet the definition of "business" under the CCPA, and thus whether users of the website will have the protections afforded by the CCPA and CPRA.

To address this issue, the author may wish to amend the bill to specify that the online statewide repository is prohibited from collecting and selling the personal information of those who visit the website.

- b. Uncertainty about who or what entity will establish the online statewide repository and what fees can and cannot be charged*

As noted above, the bill as drafted does not specify the web address for the online statewide repository or who or what entity will establish it and maintain it. This could lead to confusion for complying with the bill's provisions, especially if more than one website claims to be the statewide online repository. The author may wish to consider clarifying what the website will be in the bill or providing that the bill's provisions would not become operative until some state entity, perhaps the Secretary of State or the Attorney General, certifies a website as the statewide online repository under the provisions of the bill.

Additionally, as the bill is currently drafted it is confusing exactly when a newspaper can charge for access to its online print edition and if a fee or charge can be assessed for accessing the statewide online repository. The author may wish to clarify these provisions.

- c. Bill cannot bind future Legislatures*

The author and sponsor of the bill state that this bill is intended to prevent future bills like AB 721 (Valencia, Ch. 811; Stats. 2023) from being enacted by establishing a comprehensive public notice framework that includes online posting. This bill may very well achieve that goal by deterring similar legislation from being enacted; however, the California Supreme Court has held that "neither house of the Legislature may bind its own hands or those of future Legislatures by adopting rules not capable of change." (*In re Collie* (1952) 38 Cal. 2d 396, 398.) Though the bill would establish a comprehensive framework for online publication, it would not prevent a future Legislature from enacting similar legislation to AB 721.

5. Amendments

The specific amendments to address the issues described above in Comment 4 are included in the mock-up at the end of the analysis. The mock-up also includes several technical and nonsubstantive changes.

6. Statements in support

The sponsors of this measure, the California News Publishers Association, write in support stating:

Newspapers of general circulation are adjudicated and have been defined in California law for decades. They are certified as the link to cities, counties, and public notice districts, which are geographically designated areas where certain decisions and events must be made known to residents. Such notices include

government meetings and budget votes, opportunities for citizen participation, court notices, contract bids, and unclaimed property, among many.

Due to newspapers' roles in their communities and adjudication standards, they have been the trusted platform of record for legally required public notices. However, the actions of some industries and states have pushed to move public notice from trusted newspapers to private or government, non-adjudicated websites with no standards or certifications. It is imperative we maintain news sources as the neutral and trusted source for Californians to be made aware of important information and events. [...]

Notices are a critical conduit of information about the government to the public and allow residents to monitor the actions of their elected officials. Newspapers, and more recently their associated news websites, have been the historically independent provider of such information. Millions of Californians still rely on home-delivered newspapers or their electronic editions for news and information. Maintaining notice in this adjudicated framework ensures no conflicts of interest in publishing important public information.

Attempts to move notices to government or private websites assume the public will have access to internet and will know which private or government entity website to search for agendas and other documents. With adjudicated newspapers as the single source for decades, the public can go to one trusted source for these notices. Notice standards that have existed for decades and we urge the Legislature to ensure that information is readily available and published with the same high standard.

SUPPORT

None received

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 721 (Valencia, Ch. 811; Stats. 2023) *see* Comment 2), above.

PRIOR VOTES

Assembly Floor (Ayes 73, Noes 0)
Assembly Appropriations Committee (Ayes 11, Noes 0)
Assembly Judiciary Committee (Ayes 10, Noes 0)

MOCK-UP OF AMENDMENTS TO AB 2095 (MAIENSCHEIN)⁵

SECTION 1. The Legislature finds and declares as follows:

(a) For more than 100 years, the public has relied on newspapers to publish public notices informing our communities about public agency hearings, design reviews, school board budgets, trustee sales, estate administration petitions, fictitious business names, and hundreds of other important legal events of interest to the public. Through public notices that appear in legally adjudicated newspapers, the state has reached all corners of California, from sparsely populated rural areas to large urban enclaves. Public notices placed in local and ethnic newspapers have informed many diverse communities across the state and ensured access to key information about our state and local governments, citizens, and legal systems.

(b) As part of expanding public access to public notices, members of the public shall by law gain access to public notices on newspaper internet websites and a statewide internet website, *currently capublicnotice.com*, that is maintained as a joint venture of the majority of California newspapers and contains a searchable repository of state and local public notices. At the same time, it is important to maintain access to public notices for the millions of individuals who rely on newspapers to learn about matters of public interest. Online delivery of public notices to newspaper internet websites will ensure that Californians who rely on the internet for information will have the opportunity to access public notices, while newspaper delivery of public notices will ensure that the many diverse, local, and elderly readers of newspapers will also have access to this critical public information.

SEC. 2. Section 6009 is added to the Government Code, immediately following Section 6008, to read:

6009. (a) When any public notice is legally required by a statute, ordinance, bylaw, or judicial order to be published in a newspaper of general circulation, that notice shall be published in and on all of the following:

(1) The newspaper's print publication.

(2) The newspaper's internet website or electronic newspaper available on the internet.

(3) ~~A~~The statewide internet website maintained as a repository for notices by a majority of California newspapers of general circulation, as described in this section. The newspaper in which the notice is published shall be responsible for publishing notices on a statewide internet website.

⁵ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

(b) (1) In accordance with subdivision (a), a newspaper publishing a notice that has an internet website operated by that newspaper shall also place the notice on its internet website and on a *the* statewide internet website maintained by an entity with the capacity to receive and upload legal notices from the majority of newspapers in this state as a repository for the notices.

(2) Posting on an internet website shall begin on the first day of placement on the internet website and shall run continuously until the expiration of the specified time legally required for that type of notice.

(3) Each notice required to be placed on the newspaper's internet website shall remain valid if it meets all of the requirements of this section, and the legality of the newspaper publication shall not be affected by the failure of the newspaper for any reason to upload legal notice publications to a statewide internet website or to another internet website or to accurately post the notice publication on any internet website.

(c) If a newspaper does not maintain its own internet website, publication on a *the* statewide internet website and reference to the statewide internet website in the print publication notice shall satisfy the requirement of publication on the newspaper's internet website.

(d) An error in the legal notice published on a newspaper's internet website or the statewide internet website that is a result of either (1) an error of the internet website operator; or (2) a temporary internet website outage or service interruption that prevents the publication or display of a legal notice on the internet website shall not constitute a defect in publication of the legal notice, if the legal notice appears correctly in the newspaper's print publication and satisfies all other legal notice requirements. Failure to post or maintain a public notice on the newspaper's internet website or to post a public notice on the statewide public notice internet website does not affect the validity of the public notice.

(e) (1) A newspaper or *the* statewide ~~repository~~ *internet website* shall not charge a fee or surcharge specifically to access public notices on their internet website. However a newspaper may continue to charge a fee or surcharge for access to other content on their internet website, including, but not limited to, public notices published by the newspaper, ~~if the newspaper also includes a reasonably accessible link to the statewide internet website on the newspaper's internet website.~~ *newspaper.*

(2) A newspaper ~~or statewide repository~~ shall not charge an additional fee or surcharge *specifically* for posting to the statewide ~~repository site.~~ *internet website.*

(f)(1) *The statewide internet website shall not sell or share the personal information of consumers or use it for any purposes other than those explicitly outlined in this section.*

- (2) *For purposes of this subdivision, the following terms have the following meanings:*
- (A) *“Sell” has the same definition as “sell” in subdivision (ad) of Section 1798.140 of the Civil Code.*
 - (B) *“Share” has the same definition as “share” in subdivision (ah) of Section 1798.140 of the Civil Code.*
 - (C) *“Personal information” has the same definition as “personal information” in subdivision (v) of Section 1798.140 of the Civil Code.*