

S.B. NO. 2898

JAN 23 2020

A BILL FOR AN ACT

RELATING TO PUBLIC NOTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to provide
2 government agencies the option to publish notice via a posting
3 on their official website, in lieu of or in addition to
4 publication in daily or weekly publication such as a printed
5 newspaper. Electronic posting is more expedient and cost-
6 effective, particularly for routine but time-sensitive
7 situations such as postings of clean water environmental hazard
8 advisories, as well as in more urgent conditions such as
9 disaster-related response and recovery activities.

10 The Legislature affirms that under general rules of
11 statutory construction, where two statutes conflict, the more
12 specific statute is followed. As a result, since section 1-28.5
13 is a general statute, this Act is not intended to supersede
14 procedures that, for example, assure transparency in public
15 administration such as chapter 91, Hawaii Revised Statutes,

1 "Administration Procedures," and chapter 92, Hawaii Revised
2 Statutes, "Public Agency Meetings and Records."

3 SECTION 2. Section 1-28.5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Notwithstanding any other statute, law, charter
6 provision, ordinance, or rule to the contrary, whenever a
7 government agency is required to give public notice or to
8 publish notice, the notice shall be given only as follows:

9 (1) For statewide publication:

10 (A) In a daily or weekly publication of statewide
11 circulation; or

12 (B) By publication in separate daily or weekly
13 publications whose combined circulation is
14 statewide; and

15 (2) For county-wide publication, by publication in a daily
16 or weekly publication in the affected county[-]; or

17 (3) For either statewide or county publication, by a
18 posting on the government agency's official website.

19 ~~Additional supplemental notice may also be given through Hawaii~~
20 ~~FYI, the State's interactive computer system."~~

21 SECTION 3. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

23 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *M. N. M.*

BY REQUEST

Report Title: Public Notices

SB. NO. 2898

Description:

Allows government agencies to publish public notice on their official website as an alternative to the newspaper.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: HEALTH

TITLE: A BILL FOR AN ACT RELATING TO PUBLIC NOTICES.

PURPOSE: The purpose of this bill is to allow government agencies to publish public notice on their official website as an alternative to publishing in a newspaper.

MEANS: Amend section 1-28.5(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Federal regulations require public notification for the purposes of public participation for various requirements. The federal regulations either do not explicitly require public notices in newspapers or gives the State an option to use their public website or newspaper. However, the current section 1-28.5, HRS, requires any required public notice to be in a newspaper of daily or weekly publication of statewide circulation for statewide publications or in a daily or weekly publication in the affected county for county-wide publications.

There are disadvantages to public notices in newspapers. First, readership via newspaper is declining, meaning that less of the public is viewing the public notice. Declining readership can largely be attributed to more people accessing information on the internet. Second, the newspaper publication cost is a burden to both government agencies and permit applicants, some of whom are also government agencies. Third, the font used in newspaper publications may be too small for some people to see.

As an illustration, the DOH issues approximately 60 individual National Pollutant Discharge Elimination System (NPDES) permits per year and has 12 NPDES General Permits that cover over 1000 facilities. Many of these NPDES permits authorize pollutant discharges from the construction and operation of government facilities, which are essential for the continued effective maintenance and improvement of the State. Title 40, Code of Federal Regulations (CFR), Section 124.10 requires a public notice of a draft NPDES permit and allows the permitting agency to publish the notice on the agency's own public website or in the newspaper. Since section 1-28.5, HRS, requires newspaper publication only, NPDES Permittees must coordinate and pay for the newspaper publication, which could be over \$1,500 per notice depending on the newspaper.

Federal government agencies are moving away from newspaper public notices. The U.S. Army Corps of Engineers, Honolulu District, Regulatory Branch meets the public notice requirement their proposed CWA Section 404 permits that authorize dredge and fill activities by posting such notices on their official website. Effective June 12, 2019, the Environmental Protection Agency (EPA) finalized revisions to the NPDES permitting regulations (section 84 FR 3324, 3324 - 3338) and revised 40 CFR 124.10(c)(2)(iv) to allow permitting authorities to issue public notice of NPDES permit actions online rather than in a newspaper. EPA's regulatory objective was to provide permitting authorities with an alternative method of providing notice of permit applications and hearings and encourage flexibility in reaching the public through a variety of methods that would greatly expand public access to NPDES applications and draft permits. As noted in the preamble to the EPA rule revision, the EPA carefully evaluated the potential effect of this

revision on underserved communities with Environmental Justice (EJ) concerns. In formulating the proposal, the EPA relied upon a study conducted by Native Public Media that found that the primary source for national and international news among Native American tribes is the internet. Newspapers were listed as only the third most commonly used source for news. The EPA also consulted the final National Environmental Justice Advisory Council (NEJAC), EJ in Permitting Subgroup Report. The report stated that "[n]otification of the public by publishing in the legal section of regional newspapers is antiquated and ineffective. This method should not be counted on to communicate, even if legally required." The NEJAC specifically listed website postings as a method to ensure meaningful public participation. Given, among other things, the wide availability of the internet and based on the EJ in Permitting Subgroup Report's results, the EPA concluded that notice via the internet would be a viable and effective method of informing the public of the NPDES actions listed in 40 CFR section 124.10(a)(1).

Mandating publication of public notice in newspapers in all cases was appropriate when 40 CFR section 124.10(c)(2)(i) was promulgated in 1982, 12 years before the internet became widely available for public and commercial use. Now, however, websites, along with tailored methods to ensure the public is consulted, are often more appropriate avenues for widely disseminating information to the public, and many states currently supplement the required newspaper publication by posting NPDES actions on their websites. EPA stated that its decision to allow public notice of permitting actions for NPDES permits on the permitting authority's publicly available website, in lieu of the newspaper publication requirement, increases transparency and promotes opportunities for

public involvement. It also preserves states' flexibility to publish notices in a way that best ensures the public will be given a meaningful opportunity to participate in the NPDES permitting process. While mandating public notice of permitting activities in newspapers was appropriate when 40 CFR section 124.10(c)(2)(i) was promulgated in 1982, the EPA recognizes that websites, along with other tailored means for ensuring the public consults the website, are often more appropriate avenues for widely disseminating information to the public.

Impact on the public: Allowing public notices on official government websites as an alternative to newspapers will decrease the cost associated with newspaper publication to the government agencies and their permit holders and ensure a wider dissemination of the proposed decisions to the public and encourage greater public participation.

Impact on the department and other agencies: Decreases in avoidable expenses such as fees for newspaper publication. Increased public visibility on web sites that are likely more easily accessible by the public than print newspapers.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH 840.

OTHER AFFECTED
AGENCIES: All government agencies that are required to public notice.

EFFECTIVE DATE: Upon approval.