

Bill Analysis

AB 1902

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Date of Hearing: April 18, 2012

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cameron Smyth, Chair

AB 1902 (Jones) - As Introduced: February 22, 2012

SUBJECT : Publication: newspapers of general circulation.

SUMMARY : Provides that a newspaper available on an Internet Web site may qualify as a newspaper of general circulation if it meets certain criteria. Specifically, this bill :

1) Provides that, notwithstanding any other law, a newspaper that is available on an Internet Web site is a "newspaper of general circulation" if it meets all of the following criteria:

- a) It provides local, national, or international news and intelligence of a general character on its Internet Web site.

- b) It has been established and updated at regular intervals of not less than weekly for at least three years prior to the date of adjudication.
  
- c) It has a substantial regular readership in the city, district, or judicial district in which the newspaper is seeking adjudication pursuant to subdivision (b).
  
- d) It has a bona fide list of subscribers that reside in the city, district, or judicial district in which the newspaper is seeking adjudication pursuant to subdivision (b).
  
- e) It has maintained a minimum coverage of local, national, or international news and intelligence of a general character on at least 25% of the space available on the homepage of the Internet Web site of the newspaper.
  
- f) It provides a link to public notices published in the newspaper on the homepage of the Internet Web site of the newspaper that is readily accessible to any person visiting that Internet Web site.

2) Provides that a newspaper desiring to have its standing as a

newspaper of general circulation ascertained and established, may, by its publisher, manager, editor, or attorney, file a verified petition in the superior court of the county in which it is established.

3) Defines "established" to mean "in existence under a specified name during the whole three-year period, provided that a modification of name in accordance with Section 6024, which does not substantially change the identity of the newspaper, shall not affect the status of the newspaper for the purposes of this definition."

**EXISTING LAW :**

1) Requires that various types of notices be published in a newspaper of general circulation.

2) Defines a "newspaper of general circulation" as 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, printed and published

at regular intervals in the State, county, or city where publication, notice by publication, or official advertising is to be given or made for at least one year preceding the date of the publication, notice or advertisement."

3)Requires a newspaper of general circulation to meet certain criteria, including, among others, that it be published and have a substantial distribution to paid subscribers in the city, district, or judicial district in which it is seeking adjudication.

FISCAL EFFECT : None. This bill is keyed non-fiscal.

COMMENTS :

1)This bill aims to create standards to permit Internet-based newspapers to become adjudicated as "newspapers of general publication" eligible to serve as paid instruments of public announcement for certain legally required notices. This bill is sponsored by East County Magazine, an online periodical based in San Diego County.

2)Newspapers of general circulation are used to notice a wide

variety of legal matters, including the registration of fictitious business names, probate hearings, court filings, proposed local initiative ballot titles and summaries, tax default notices, and many other statutory requirements. The purpose of limiting publication to newspapers meeting general publication standards is to ensure that published materials come to the attention of substantial numbers of persons in the relevant area.

Newspapers desiring to be adjudicated as papers of general circulation must file a verified petition in the superior court of the county in which it is established, printed and published proving that they meet specified requirements.

Newspapers are generally adjudicated by county, although they can also be adjudicated by city, district, or judicial district. Lists of adjudicated newspapers are often kept by local superior courts.

In order to be adjudicated, newspapers have two different sets of criteria that they may look to. They must prove to be 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

- a) "has been established, printed and published at regular intervals in the State, county, or city where publication, notice by publication, or official advertising is to be given or made for at least one year preceding the date of the publication, notice or advertisement"; or
  
- b) "has been established and published at regular intervals of not less than weekly in the city, district, or judicial district for which it is seeking adjudication for at least three years preceding the date of adjudication." It must have "a substantial distribution to paid subscribers in the city, district, or judicial district in which it is seeking adjudication." It must have "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." Finally, it must have "only one principal office of publication and that office is in the city, district, or judicial district for which it is seeking adjudication."

The main distinction between the two sets of criteria is that under a), the newspaper must be printed in the jurisdiction for at least one year prior to adjudication, whereas b) has no 'printed' requirement, but it does instead require weekly publication for three years prior, as well as substantial distribution, minimum coverage requirements, and a principle office of publication in the jurisdiction. This second set of criteria allows for adjudication even when the newspaper is no longer physically printed in the jurisdiction.

1)The language of AB 1902 is patterned after Government Code Section 6008, but with some significant differences.

According to opponent The Glendale News-Press, there are a number of issues with the provisions of this bill:

- a) The website must be "updated" at regular intervals, not less than weekly, and for at least three years prior to publication. Opponents argue that the meaning of the term "update" is vague, and that insubstantial changes could be made to the same content but still be considered an update.

- b) The bill does not require of web-based newspapers any kind of physical presence in the jurisdiction, while current law requires newspapers to have a principal office of publication in the jurisdiction, if not a physical printing press. While it is an obvious benefit of running a web-based newspaper to not necessarily require a physical office, opponents argue that the lack of such a requirement means that such a newspaper is less grounded in and responsive to the community.
- c) The website must have a "substantial regular readership", but its distribution need not be paid, as with printed newspapers. Opponents argue that the decades-old requirement of paid readership is a better measure of engagement than unpaid distribution (i.e., if you are paying for it, you are more likely to read it).
- d) The bill requires that a minimum of 25% of homepage space be dedicated to news, but opponents point out that the space on the homepage may represent only a fraction of the total space on the website (which could be filled with ads). By comparison, a printed newspaper must have at least 25% of its total content dedicated to general news.



Furthermore, while the meaning of the terms "substantial" (how many? in what population?) and "readership" (page views? subscriptions?) are arguably vague (as are other terms in this bill), they would likely need to be argued before a court hearing the adjudication request, in much the same way as the similarly vague provisions for printed newspapers. Courts would likely draw upon established case law related to printed publications for guidance, but the precise meaning of many of these terms would still need to be judicially defined in the absence of more specific statutory language.

The Committee may wish to consider whether or not certain terms of this bill could be made more specific, based in large part on the guidance of existing case law.

2) One relevant question is whether or not individuals in the community derive sufficient useful notice from the printed notices now required by law to justify the expense of physically publishing them. That question is also part of a larger debate about the relative value to Californians of printed and online news sources.

According to the sponsor, "MSNBC reported in March 2011 that the majority of Americans now acquire more of their news on the Internet than from print newspapers, based on the latest Pew Research?ÝT]he study found that people are spending 'more time with news than ever before' but that the digital media sector is the only one experiencing audience growth. In addition, 47% of Americans now access news on mobile devices such as iPADS and cellphones. In December 2010, 41% said the Internet is where they received 'most of their news' on major issues, up 17% from 2009."

The sponsor also contends that certain rural communities rely more heavily on online news sources than one might expect: "Many residents in rural, desert and mountain communities appreciate online media that covers their issues when nobody else does. Often, I've been the ONLY journalist to show up at public meetings in these towns on issues that will impact their communities, such as proposed power plants, zoning changes, development projects, and much more. The publication I edit has testimonials from community leaders across East County who are grateful for the excellent news coverage provided."

According to opponents, however, newspapers are still heavily relied upon by Americans: more than 71% of U.S. adults, or nearly 166 million people, read a newspaper in print or online in the past week. Only 62% of adult Americans had broadband Internet connections at home, according to a 2011 Pew report. As such, they argue, printed newspapers remain the most read, most reliable place to read and establish legal proof of public notices.

Opponents also cite a 2001 survey by the Arizona Newspapers Association that found strong levels of support in Arizona for newspaper-based public notices:

- a) 82% of individuals surveyed regularly or sometimes read or looked at legal notices in newspapers while 87% never looked at legal notices on the web;
- b) 63% of respondents felt that it was important or very important to continue publishing legal and public notices in the newspaper;
- c) 58% of respondents felt that newspaper-based public

notices helped make local officials more careful about they spend taxpayers' money; and,

d) 68% of respondents felt that public agencies should publish legal and public notices only in newspapers (7% said notices should be published on the web only and 2% said both).

The Committee may wish to inquire of supporters and opponents as to the comparative public reach of both printed and online newspapers, and how to determine whether or not residents of rural and less populated areas are being adequately served by a continued requirement that newspapers of general circulation remain exclusively in print.

1) On April 11, 2012, this Committee heard AB 1957 (Gordon), which proposed in part to shorten the notices that tax collectors are required by statute to publish related to pending defaults and instead make the bulk of the notice available online. The bill failed passage on a 2-2 vote.

In 2009, this Committee heard AB 715 (Caballero), which would have authorized city clerks to publish and post the full text

of city ordinances on that city's Internet Web site instead of in a newspaper of general circulation. That bill was passed by the committee (9-0), and passed on the Assembly floor (75-0), but was subsequently amended to address an unrelated issue.

2)Support arguments : According to the sponsor, "This bill would allow online media outlets that meet reasonable criteria to publish public notices. The current law was written back in the era of telegraphs, long before the Internet was invented. This antiquated law limits public notices to only print publications?despite the fact that the vast majority of Americans now get more news online than in print."

Opposition arguments : According to the Glendale News-Press, "AB 1902 is inconsistent with the letter and spirit of the existing adjudication scheme. As drafted, [AB 1902] would allow Internet publications to qualify as newspapers of general circulation even where they have no established connection to the relevant community and dedicate only a small fraction of their content to news and intelligence?Such a result is inconsistent?and would defy the policy that the

adjudication statutes were enacted to support."

3)This bill is double-referred to the Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

East County Magazine/East County Publishing Coalition [SPONSOR]

California Association of Sanitation Agencies

DSD Business Systems

Jacumba-Boulevard Revitalization Alliance

Leadership Management International

Individual letters (14)

Opposition

Bay Area News Group

Brehm Communications

California Newspaper Publishers Association

California Newspapers Partnership

Glendale News-Press

Monterey County Weekly

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The Press Enterprise

The Record

The Star-News

Individual letters (2)

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