

SUMMARY OF CHANGES TO MINNESOTA PUBLIC NOTICE LAW

ENACTED BY THE 2022 LEGISLATURE

This document summarizes the amendments to the law governing the publication of public notices that were adopted by the 2022 Minnesota Legislature. It also describes the impact and application of those amendments.

The legislation is formally known as Laws 2022, Chapter 61 (the full text of the legislation is included at the end of this document). Most of the amendments modify Chapter 331A of the Minnesota statutes. They take effect on August 1, 2022.

The amendments are not complicated, and will not require newspapers to make any dramatic changes in publishing public notices. In fact, for the most part, the amendments simplify the law and make it easier to apply.

The 2022 legislation was promoted by MNA, with the goal of updating state public notice law, and in particular, incorporating into that law greater recognition of digital communications. The legislation was broadly supported by local government bodies, because they see it as improving their ability to comply with public notice requirements.

A. New Statutory Definitions

Among the most important features of the new law is the addition of definitions for three key terms: “publish,” “general circulation,” and “e-edition.” Many of the improvements made by the 2022 legislation are based on the application of these definitions. The new definitions are as follows:

1. PUBLISH. (Minn. Stat. §331A.01, subd. 12.) "Publish" is defined as “dissemination in the print edition of a qualified newspaper, and in the e-edition of the qualified newspaper if it has one.”

2. GENERAL CIRCULATION. (Minn. Stat. §331A.01, subd. 13.) "General circulation" means "that a newspaper distributes more than a nominal percentage of its total print circulation in a particular geographic area."

3. E-EDITION. (Minn. Stat. §331A.01, subd. 14.) "E-edition" is defined as "a digital facsimile of a newspaper's print edition that is substantially the same in both format and content as the print edition."

Comment and Explanation: *The definition of "publish" expands the scope of what a newspaper can claim for circulation in the context of public notices, so that it includes both print and digital distribution. Even though digital circulation is difficult to measure, it definitely exists, and newspapers should receive some credit for it.*

However, it's important to understand that under the new law, distribution solely by means of an e-edition is not sufficient for purposes of being qualified to publish public notices—the newspaper must also have some minimal amount of print circulation containing the public notices. The new definition, in stating that "publish" only includes dissemination by means of an e-edition if it is "the e-edition of [a] qualified newspaper," makes clear that the e-edition must replicate the print edition of a qualified newspaper—in other words, there can be no qualified e-edition without a qualified print edition.

This interpretation is reinforced by the new definitions of "general circulation" and "e-edition." A newspaper cannot be "qualified" to publish public notices unless it has "general circulation" (per §331A.02, subd. 1(d)). That term is now defined to mean that the newspaper "distributes more than a nominal percentage of its total print circulation in a particular geographic area." ("Nominal" for legal purposes basically means "very small; minimal or insignificant.") In other words, to be qualified to publish a public notice, some credible quantity of the newspaper's print circulation must occur in the area to which the notice is targeted.

Furthermore, the new definition of "e-edition" states that it means "a digital facsimile of a newspaper's print edition that is substantially the same in both format and content as the print edition." Thus as noted, there must be a print edition before there can be an e-edition for purposes of public notice law.

One question that's frequently been raised about the new public notice law is whether a newspaper that publishes a print edition only once or twice a week, but that also issues separate digital versions of the newspaper during the week, can validly publish public notices by placing them only in those digital editions. The answer to this question is clearly "no," for the reasons described above.

B. Changes in the Requirements for Qualified Newspapers

Minn. Stat. §331A.02, subd. 1 describes the criteria that a publication must comply with in order to be “qualified” to publish public notices (the first sentence of the statute states that “[n]o newspaper in this state shall be entitled to any compensation or fee for publishing any public notice unless it is a qualified newspaper”).

The 2022 legislation made a number of important changes to this portion of the law, which are described below. Underlining shows new statutory language; ~~overstriking~~ shows language that has been deleted from the statute. Only those paragraphs in §331A.02, subd. 1 that were amended by the 2022 legislation are included here.

TO BE QUALIFIED, A PUBLICATION MUST:

(a) be printed in the English language in newspaper format and in column and sheet form equivalent in printed space to at least ~~1,000 square inches, or~~ 800 square inches ~~if the political subdivision the newspaper purports to serve has a population of under 1,300 and the newspaper does not receive a public subsidy;~~

Comment and Explanation: *The changes in this paragraph simply remove unnecessary technicalities.*

(c) in at least half of its issues each year, have no more than 75 percent of its printed space comprised of advertising material and paid public notices. In all of its issues each year, have 25 percent, if published more often than weekly, or 50 percent, if weekly, of its news columns devoted to news of local interest ~~to the community which it purports to serve.~~ Not more than 25 percent of its total nonadvertising column inches in any issue may wholly duplicate any other publication unless the duplicated material is from recognized general news services;

Comment and Explanation: *The revision in paragraph (c) eliminates a reference that has caused unnecessary confusion, since most newspapers “purport to serve” more than one community.*

(d) be ~~circulated in the political subdivision which it purports to serve, and either have at least 400 copies regularly delivered to paying subscribers, or 250 copies delivered to paying subscribers if the political subdivision it purports to serve has a population of under 1,300, or have at least 400 copies regularly distributed without charge to local residents, or 250 copies distributed without charge to local residents if the political subdivision it purports to serve has a population of under 1,300~~ of general circulation in the area to which a public notice is directed, or where there is a reasonable likelihood that the person to whom it is directed will become aware of the notice;

Comment and Explanation: The revisions found in this paragraph are among the most significant enacted by the 2022 legislation. Several technical requirements have been eliminated, including those referring to the community the newspaper purports to serve, the minimum number of subscribers, the minimum number of copies delivered without charge, and community population thresholds. They've been replaced by a considerably simpler standard which draws on the new definition of "general circulation," as described above. The standard requires that the newspaper either

(1) be of general circulation in the area to which the notice is directed (this will apply to most public notices, such as those published by local governments, which are usually directed to the general public); or

(2) be of general circulation in the area where there is a reasonable likelihood that the person to whom it is directed will become aware of the notice (this option will apply to notices aimed at one person, or a small number of people, such as a legal summons, or a probate notice).

The new standard is not scientifically precise, nor is it intended to be, allowing some flexibility in application.

(e) have its known office of issue ~~established~~ located in either the county in which lies, in whole or in part, the political subdivision which ~~the newspaper purports to serve~~ is publishing the public notice, or in an adjoining county;

Comment and Explanation: The revisions to this paragraph clarify issues relating to the location of a newspaper's known office of issue, by replacing the word "established" with "located," and by replacing the ambiguous linkage to the political subdivision which "the newspaper purports to serve" with the straightforward requirement that the newspaper's known office must be in the same county as the political subdivision publishing the public notice, or in an adjoining county.

(f) file a copy of each issue ~~immediately~~ promptly with the State Historical Society;

Comment and Explanation: By replacing "immediately" with "promptly," the statute offers a more workable and sensible standard.

(i) between September 1 and December 31 of each year publish a sworn United States Post Office periodicals-class statement of ownership and circulation or a statement of ownership and circulation verified by a recognized independent circulation auditing agency covering a period of at least one year ending no earlier than the June 30 preceding the publication deadline. When publication occurs after December 31 and before July 1, qualification shall be effective from ~~the date of the filing described in paragraph (j)~~ January 1 through December 31 of that year; and

Comment and Explanation: *The new language here simply clarifies the application of the statute.*

(j) after publication of the statement described in paragraph (i), submit to the secretary of state by December 31 a filing containing the newspaper's name, address of its known office of issue, telephone number, and a statement that it has complied with all of the requirements of this section. The filing must be accompanied by a fee of \$25. The secretary of state shall make available for public inspection a list of newspapers that have filed. Acceptance of a filing does not constitute a guarantee by the state that any other qualification has been met.

Comment and Explanation: *The change to this paragraph is again merely intended to make the statute read more clearly.*

C. Miscellaneous Statutory Changes

1. PUBLICATION; SUSPENSION; CHANGES. (Minn. Stat. §331A.02, Subd. 3.) The following circumstances shall not affect the qualification of a newspaper, invalidate an otherwise valid publication, or invalidate a designation as official newspaper.

(b) The consolidation of one newspaper with another published in the same county or in an adjoining county, or a change in its name or ownership, or a temporary change in its known office of issue.

(c) Change of the day of publication, the frequency of publication, or the change of the known office of issue from one place to another within the same county or in an adjoining county. Except as provided in this subdivision, suspension of publication, or a change of known office of issue ~~from one county to another~~, or failure to maintain its known office of issue in the county or in an adjoining county, shall deprive a newspaper of its standing as a qualified newspaper until it again becomes qualified pursuant to subdivision 1.

Comment and Explanation: *Although the circumstances described in this section don't happen very often, the revisions to the statute enacted by the 2022 legislation reduce the chances that a newspaper could lose its qualified status should those circumstances occur.*

2. POSTING NOTICES ON WEBSITE. (Minn. Stat. §331A.02, Subd. 5.) If, in the normal course of its business, a qualified newspaper maintains a website, then as a condition of accepting and publishing public notices, the newspaper must agree to post all the notices on its website and on the Minnesota Newspaper Association's statewide public notice website, at no additional cost to the advertiser. The newspaper's website must include a link to its online public notices section, the contents of which must be accessible at no cost to the public. Each notice must remain on the website during the notice's full publication

period. Failure to post or maintain a public notice on the newspaper's website or to post a public notice on the statewide public notice website does not affect the validity of the public notice.

Comment and Explanation: *As revised, this section contains a new requirement that newspapers which publish public notices (and which have a website) must, in addition to posting the notices on their own websites, also post the notices on the Minnesota Newspaper Association's statewide public notice website—both at no additional cost to the advertiser. In addition, the new language states that a newspaper's website must include a link to its online public notices section, the contents of which must be accessible at no cost to the public.*

3. JOINT BIDDING. [Minn. Stat. §331A.04, Subd. 7.] A bid submitted jointly by two or more newspapers for the publication of public notices must not be considered anticompetitive or otherwise unlawful if the following conditions are met:

(1) all of the qualified newspapers ~~in the political subdivision~~ eligible for designation participate in the joint bid;

(2) the existence of the joint bid arrangement is disclosed to the governing body of the political subdivision before or at the time of submission of the joint bid; and

(3) the ~~board~~ governing body is free to reject the joint bid and, if it does, individual qualified newspapers do not refuse to submit separate bids owing to the rejection of the joint bid.

Comment and Explanation: *The revisions to this section are simply intended to clarify the statutory language, without changing the meaning or application.*

4. ERRORS IN PUBLICATION. [Minn. Stat. §331A.05, Subd. 7.] If through no fault of the political subdivision, an error occurs in the publication of a public notice, the error shall have no effect on the validity of the event, action, or proceeding to which the public notice relates. In cases where the error is the fault of the newspaper, the political subdivision shall not be charged for the publication.

Comment and Explanation: *The new language here adds to the statute a rule that nearly all newspapers have traditionally followed anyway, which is that where an error occurs in a public notice publication that is the fault of the newspaper, the advertiser cannot be charged for the publication.*

5. [CITY FINANCIAL STATEMENTS]. (Minn. Stat. §471.698, Subd. 1.) In any city with a population of less than 2,500 according to the latest federal census, the city clerk or chief financial officer shall:

(c)(1) publish the [financial] statement, or a summary of the statement in a form as prescribed by the state auditor, within 90 days after the close of the fiscal year in a qualified newspaper of general circulation in the city.

It is not necessary to publish individual disbursements of less than ~~\$300~~ \$500, if disbursements aggregating \$1,000 or more to any person, firm, or other entity are set forth in a schedule of major disbursements showing amounts paid out, to whom, and for what purpose, and are made a part of and published with the financial statement.

Comment and Explanation: *The only change made in this section is that the dollar amount below which small cities do not need to publish individual disbursements in their financial statements is increased from \$300 to \$500. That figure has not been changed in 18 years.*

FULL TEXT OF THE 2022 PUBLIC NOTICE LEGISLATION

(CHAPTER 61--H.F. No. 3682)

An act relating to local government; expanding certain requirements regarding qualified newspapers; amending Minnesota Statutes 2020, sections 331A.01, subdivision 3, by adding subdivisions; 331A.02, subdivisions 1, 3, 5; 331A.04, subdivision 7; 331A.05, subdivision 7; 471.698, subdivision 1; repealing Minnesota Statutes 2020, section 331A.01, subdivision 4.

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

Section 1. Minnesota Statutes 2020, section 331A.01, subdivision 3, is amended to read:

Subd. 3. Political subdivision.

"Political subdivision" means a county, ~~municipality~~, school district, home rule charter and statutory city or town, or any other local political subdivision or local or area district, commission, board, or authority.

Sec. 2. Minnesota Statutes 2020, section 331A.01, is amended by adding a subdivision to read:

Subd. 12. Publish.

"Publish" means dissemination in the print edition of a qualified newspaper, and in the e-edition of the qualified newspaper if applicable.

Sec. 3. Minnesota Statutes 2020, section 331A.01, is amended by adding a subdivision to read:

Subd. 13. General circulation.

"General circulation" means that a newspaper distributes more than a nominal percentage of its total print circulation in a particular geographic area.

Sec. 4. Minnesota Statutes 2020, section 331A.01, is amended by adding a subdivision to read:

Subd. 14. E-edition.

"E-edition" means a digital facsimile of a newspaper's print edition that is substantially the same in both format and content as the print edition.

Sec. 5. Minnesota Statutes 2020, section 331A.02, subdivision 1, is amended to read:

Subdivision 1. Qualification.

No newspaper in this state shall be entitled to any compensation or fee for publishing any public notice unless it is a qualified newspaper. A newspaper that is not qualified must inform a public body that presents a public notice for publication that it is not qualified. To be qualified, a newspaper shall:

(a) be printed in the English language in newspaper format and in column and sheet form equivalent in printed space to at least 1,000 square inches, or 800 square inches if the political subdivision the newspaper purports to serve has a population of under 1,300 and the newspaper does not receive a public subsidy;

(b) if a daily, be published and distributed at least five days each week. If not a daily, the newspaper may be published and distributed at least twice a month with respect to the publishing of government public notices. In any week in which a legal holiday is included, not more than four issues of a daily paper are necessary;

(c) in at least half of its issues each year, have no more than 75 percent of its printed space comprised of advertising material and paid public notices. In all of its issues each year, have 25 percent, if published more often than weekly, or 50 percent, if weekly, of its news columns devoted to news of local interest ~~to the community which it purports to serve~~. Not more than 25 percent of its total nonadvertising column inches in any issue may wholly duplicate any other publication unless the duplicated material is from recognized general news services;

(d) ~~be circulated in the political subdivision which it purports to serve, and either have at least 400 copies regularly delivered to paying subscribers, or 250 copies delivered to paying subscribers if the political subdivision it purports to serve has a population of under 1,300, or have at least 400 copies regularly distributed without charge to local residents, or 250 copies distributed without charge to local residents if the political subdivision it purports to serve has a population of under 1,300~~ of general circulation in the area to which a public

notice is directed, or where there is a reasonable likelihood that the person to whom it is directed will become aware of the notice;

(e) have its known office of issue ~~established~~ located in either:

(1) the county in which lies, in whole or in part, the political subdivision which the newspaper purports to serve, that is publishing the public notice; or ~~in~~

(2) an adjoining county;

(f) file a copy of each issue ~~immediately~~ promptly with the State Historical Society;

(g) be made available at single or subscription prices to any person or entity requesting the newspaper and making the applicable payment, or be distributed without charge to local residents;

(h) have complied with all the foregoing conditions of this subdivision for at least one year immediately preceding the date of the notice publication;

(i) between September 1 and December 31 of each year publish a sworn United States Post Office periodicals-class statement of ownership and circulation or a statement of ownership and circulation verified by a recognized independent circulation auditing agency covering a period of at least one year ending no earlier than the June 30 preceding the publication deadline. When publication occurs after December 31 and before July 1, qualification shall be effective from ~~the date of the filing described in paragraph (j)~~ January 1 through December 31 of that year; and

(j) after publication of the statement described in paragraph (i), submit to the secretary of state by December 31 a filing containing the newspaper's name, address of its known office of issue, telephone number, and a statement that it has complied with all of the requirements of this section. The filing must be accompanied by a fee of \$25. The secretary of state shall make available for public inspection a list of newspapers that have filed. Acceptance of a filing does not constitute a guarantee by the state that any other qualification has been met.

Sec. 6. Minnesota Statutes 2020, section 331A.02, subdivision 3, is amended to read:

Subd. 3. Publication; suspension; changes.

The following circumstances shall not affect the qualification of a newspaper, invalidate an otherwise valid publication, or invalidate a designation as official newspaper.

(a) Suspension of publication for a period of not more than three consecutive months resulting from the destruction of its known office of issue, equipment, or other facility by the elements, unforeseen accident, or acts of God or by reason of a labor dispute.

(b) The consolidation of one newspaper with another published in the same county or in an adjoining county, or a change in its name or ownership, or a temporary change in its known office of issue.

(c) Change of the day of publication, the frequency of publication, or the change of the known office of issue from one place to another within the same county or in an adjoining county. Except as provided in this subdivision, suspension of publication, or a change of known office of issue ~~from one county to another~~, or failure to maintain its known office of issue in the county or in an adjoining county, shall deprive a newspaper of its standing as a qualified newspaper until it again becomes qualified pursuant to subdivision 1.

Sec. 7. Minnesota Statutes 2020, section 331A.02, subdivision 5, is amended to read:

Subd. 5. Posting notices on website.

If, in the normal course of its business, a qualified newspaper maintains a website, then as a condition of accepting and publishing public notices, the newspaper must agree to post all the notices on its website and on the Minnesota Newspaper Association's statewide public notice website, at no additional cost to the advertiser. The newspaper's website must include a link to its online public notices section, the contents of which must be accessible at no cost to the public. Each notice must remain on the website during the notice's full publication period. Failure to post or maintain a public notice on the newspaper's website or to post a public notice on the statewide public notice website does not affect the validity of the public notice.

Sec. 8. Minnesota Statutes 2020, section 331A.04, subdivision 7, is amended to read:

Subd. 7. Joint bidding.

A bid submitted jointly by two or more newspapers for the publication of public notices must not be considered anticompetitive or otherwise unlawful if the following conditions are met:

(1) all of the qualified newspapers ~~in the political subdivision~~ eligible for designation participate in the joint bid;

(2) the existence of the joint bid arrangement is disclosed to the governing body of the political subdivision before or at the time of submission of the joint bid; and

(3) the ~~board~~ governing body is free to reject the joint bid and, if it does, individual qualified newspapers do not refuse to submit separate bids owing to the rejection of the joint bid.

Sec. 9. Minnesota Statutes 2020, section 331A.05, subdivision 7, is amended to read:

Subd. 7. Errors in publication.

If through no fault of the political subdivision, an error occurs in the publication of a public notice, the error shall have no effect on the validity of the event, action, or proceeding to which the public notice relates. In cases where the error is the fault of the newspaper, the political subdivision shall not be charged for the publication.

Sec. 10. Minnesota Statutes 2020, section 471.698, subdivision 1, is amended to read:

Subdivision 1. All operations except some hospitals, nursing homes.

In any city with a population of less than 2,500 according to the latest federal census, the city clerk or chief financial officer shall:

(a) prepare a detailed statement of the financial affairs of the city including operations of municipal hospitals and nursing homes, liquor stores, and public utility commissions in the style and form prescribed by the state auditor, for the preceding fiscal year showing all money received, with the sources, and respective amounts thereof; all disbursements for which orders have been drawn upon the treasurer; the amount of outstanding and unpaid orders; all accounts payable; all indebtedness; contingent liabilities; all accounts receivable; the amount of money remaining in the treasury; and all items necessary to show accurately the revenues and expenditures and financial position of the city;

(b) file the statement in the clerk's or financial officer's office for the public inspection and present it to the city council within 45 days after the close of the fiscal year;

(c)(1) publish the statement, or a summary of the statement in a form as prescribed by the state auditor, within 90 days after the close of the fiscal year in a qualified newspaper of general circulation in the city; or

(2) if there is no qualified newspaper of general circulation in the city, the clerk shall, at the direction of the city council, post copies in three of the most public places in the city. It is not necessary to publish individual disbursements of less than ~~\$300~~ \$500, if disbursements aggregating \$1,000 or more to any person, firm, or other entity are set forth in a schedule of major disbursements showing amounts paid out, to whom, and for what purpose, and are made a part of and published with the financial statement; and

(d) submit within 90 days after the close of the fiscal year a copy of the statement to the state auditor in such summary form as the state auditor may prescribe.

A municipal hospital or nursing home established before June 6, 1979, whose fiscal year is not a calendar year on August 1, 1980, is not subject to this subdivision but shall submit to the state auditor a detailed statement of its financial affairs audited by a certified public accountant, a public accountant or the state auditor no later than 120 days after the close of its fiscal year. It may also submit a summary financial report for the calendar year.

Sec. 11.

REPEALER.

Minnesota Statutes 2020, section 331A.01, subdivision 4, is repealed.

Presented to the governor May 17, 2022

Signed by the governor May 19, 2022, 1:44 p.m