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Local Government Interim Committee

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FINAL REPORT TO THE 68TH MONTANA LEGISLATURE

SJ 23: STUDY OF PUBLIC NOTICES BY ELECTRONIC MEANS



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This report is a summary of the work of the Local Government Interim Committee as outlined in the Local Government Interim Committee’s 2021-2022 work plan and Senate Joint Resolution 23 (2021). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Local Government Interim Committee in reaching its conclusions. To review additional information, including audio, minutes, and exhibits, visit the Local Government Interim Committee website: <https://leg.mt.gov/committees/interim/lgic/>.

A full report, including links to the documents referenced in this print report, is available at the Local Government Interim Committee website: <https://leg.mt.gov/committees/interim/lgic/sj-23/>.

SJ 23: STUDY OF ELECTRONIC PUBLIC NOTICE

OVERVIEW

Currently, public notices at both the state and local levels must be published in a newspaper of general circulation. Statutory requirements for public notice vary, with some notices posted electronically, mailed, or posted physically, leading to possible confusion. The advent of the Internet offers additional, possibly simplified, and cost-effective methods to meet state and local public notice needs. However, the use of electronic means carries complications and questions, such as how to determine the types of electronic publications that are relevant, local, and widely available to the populations affected by government actions and how to ensure the timeliness and validity of electronic notices.

Most state and local public notices must be published in a newspaper of general circulation.

Study Directives

The [study resolution](#) suggested the committee:

- review electronic public notice proposals and statutes of other states;
- investigate methods to ensure the validity of electronic publications, such as proving that proper public notice was provided and provided for the requisite amount of time without substantive content changes;
- consider the consolidation of public notice requirements and examine the retention policies of digital records; and
- determine which publications are appropriate to promulgate public notice in the digital age and possibly consider their use for state and local government entities.

The study ranked 27th out of 28 study resolutions in the postsession poll of legislators. The Legislative Council assigned SJ 23 to the Local Government Interim Committee, the third of three assigned studies. The committee moved to devote roughly 20% of committee time to SJ 23.

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BACKGROUND

During the 2021 legislative session, Sen. Tom Jacobson, D-Cascade, originally requested [LC 10](#) as a bill draft to allow certain online newspaper organizations to publish public notices that affect local governments and local citizens.

The bill was drafted, totaling almost 300 pages, before the topic was redirected into a study resolution to further investigate public notice delivery and distribution. The Local Government Interim Committee was assigned [SJ 23](#), the study resolution born of the original bill draft request, LC 10.¹

OTHER STATE ATTEMPTS

States increasingly bring legislation related to electronic public notice, most likely in response to the societal change from a primarily hard-copy news market to one that is increasingly electronic. During the last three years, multiple attempts to allow or require electronic public notice were attempted with limited success. The National Conference of State Legislatures compiled a [three-year summary of legislation](#) outlining the policy attempts.

The committee expressed interest in exploring the idea of a "state-wide notice repository" website, an idea illustrated in the three-year summary. This method of public notice essentially reverses the current roles of public notice: instead of the government entity attempting to "push" the notice to constituents through a newspaper or other publication, the public is encouraged to access public notices voluntarily. Additional mechanisms may be added to ensure the public is made aware of public notices housed in an online repository, such as allowing e-mail notification subscription services that send a notification to a citizen's e-mail when a certain locale or entity posts a public notice. The public notice site could be searchable to increase ease of use and allow a citizen to access past public notices.

Currently, a statutorily-required or state-operated repository does not exist in Montana; however, the [Montana Newspaper Association](#) maintains a searchable database of public records at www.mtpublicnotices.com/mna/legals. Local newspapers submit electronic copies of legal advertisements, which are then searchable by date, city, county, or newspaper.

Many states have similar systems that utilize a public notice website created and maintained by the newspapers themselves. For example, "Public Notice Washington State" at www.wapublicnotices.com provides that the "website was created as a public service by the newspapers of Washington State. The website receives uploaded public notices daily from newspapers throughout the state." Other states have brought legislation for similar concepts, particularly legislation requiring the state, often through

¹ For further analysis of LC 10, please see "[LC10: A Bill Draft to Allow Electronic Public Notice](#)" presented to the committee in September 2022.

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the Secretary of State's office, to create and maintain a public notice website. However, to date, all legislation of this nature has failed.²

After [considering a state-wide repository](#), the committee decided against pursuing the idea further.

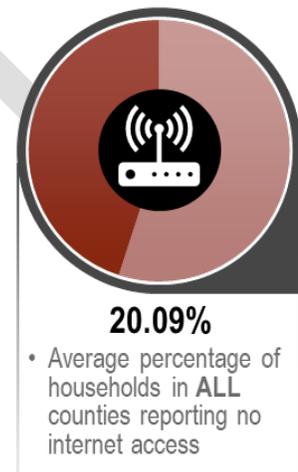
INTERNET CONNECTIVITY

Montana citizens increasingly see improved Internet access. The Federal Communications Commission (FCC) compiles data on the number and available speeds of Internet providers. As of December 2020, the FCC reported that 100% of Montana citizens have access to at least one Internet provider offering speeds of 25/3 Mbps (megabits per second) while only 5.85% have access to fast connection speeds of 1000/100 Mbps or greater.³ However, the data is derived from information found on voluntarily submitted Internet service provider forms, making it hard to verify. Also, current FCC data may not adequately capture the challenges to provide Internet in hard-to-service areas.

The National Telecommunications and Information Administration (NTIA) offers a potentially more robust data set with information gathered from multiple sources including the FCC, the U.S. Census Bureau, the United States Department of Agriculture, state governments, and private entities.⁴

Additionally, numerous factors including age, education and income levels, comfort with technology acquisition, and confidence in technology security contribute to a citizen's decision to subscribe to Internet service regardless of whether service is available.

The number of Montanans with Internet access is challenging to capture due to the many types of Internet connections available, all with varying levels of effectiveness depending on geographic location and available infrastructure. The following map illustrates the state's fiberoptic network as reported by the Montana Telecommunications Association and its member providers. Fiber is considered one of the more stable, reliable, and fast connections. However, fiber also presents one of the largest installation challenges – both logistically and financially.⁵



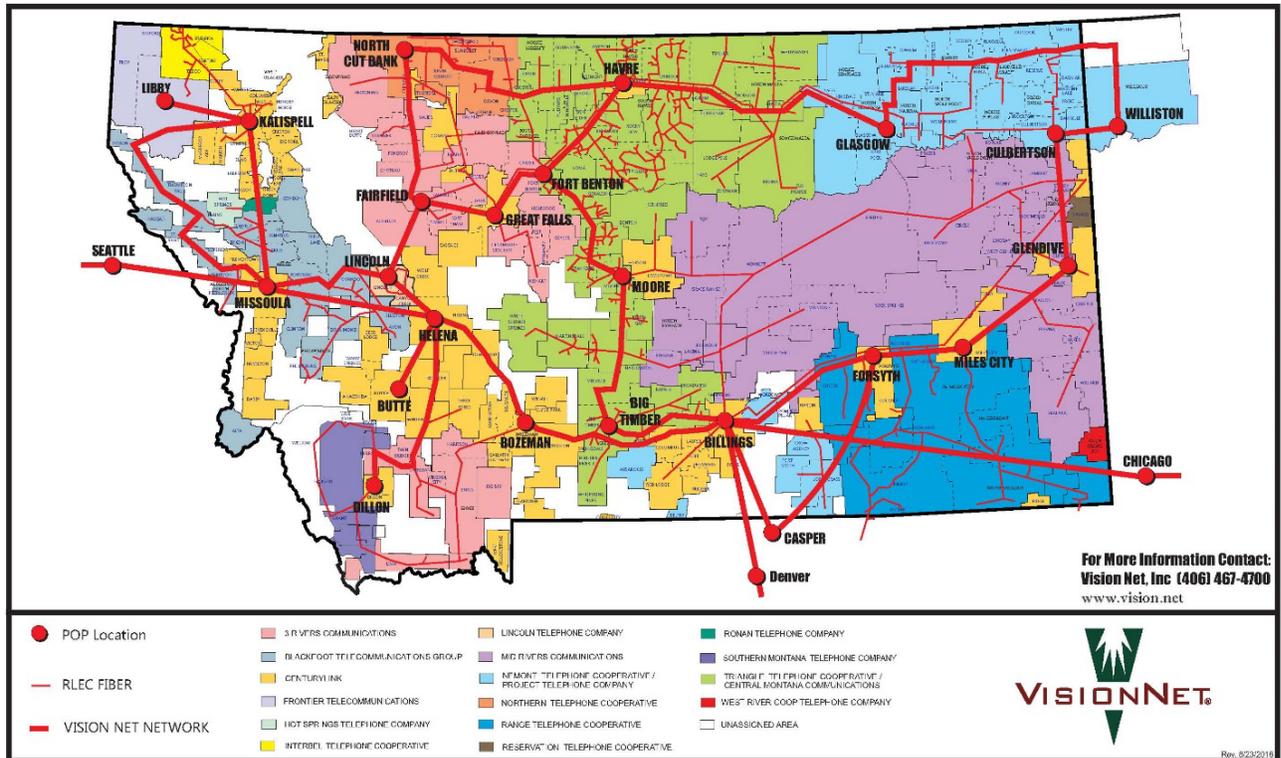
² "[SJ23: State-Wide Repository for Public Notices](#)" presented to the committee in November 2021.

³ Federal Communications Commission, Fixed Broadband Deployment – Area Comparison of Broadband Availability in Different Areas. <https://broadbandmap.fcc.gov/#/>

⁴ Other sources include the Universal Service Administrative Company, Ookla, Measurement Lab (M-Lab), Microsoft, BroadbandNow, and White Star. More information may be accessed at: <https://www.ntia.doc.gov/press-release/2021/ntia-creates-first-interactive-map-help-public-see-digital-divide-across-country>

⁵ For more information, see "[Internet and Online Newspaper Access in Montana](#)" presented to the committee in January 2022.

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NEWSPAPER ACCESS

As of December 2021, the Montana Newspaper Association (MNA) reported 79 member publications.⁶

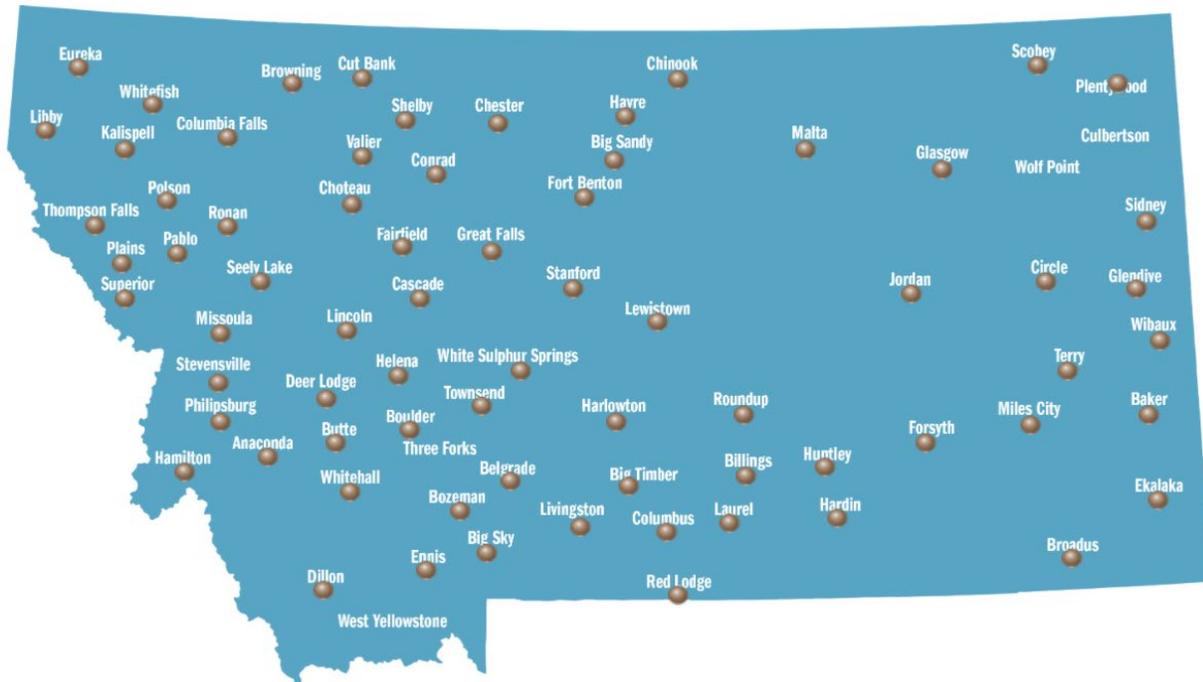
The following newspapers offer online options:

- 71** – online subscriptions available
- 3** – free online access to all articles:
 - Lone Peak Lookout (Big Sky)
 - Silver State Post (Deer Lodge) – *most, not all articles available online at no cost*
 - Kootenai Valley Record (Libby)
- 5** – no online access:
 - Anaconda Leader
 - The Times-Clarion (Harlowton)
 - Jordan Tribune (Jordan)
 - Sheridan County News (Plentywood)

⁶ All information, including the map, was gathered from the Montana Newspaper Association website: <https://www.mtnewspapers.com/>. Online access determined by visiting individual newspaper websites on December 15 and 16, 2021.

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MT Newspaper Assoc. Membership Directory Map



KENTUCKY LEGISLATION

The state of Kentucky conducted a study entitled "[Cost and Policy Considerations for State-Mandated Local Public Notices](#)" in 2016. The comprehensive study covered areas of committee interest, including the cost, reach, and responsibility of notices, publication requirements, times of publication, and the cost, validity, and functionality of Internet public notices.

In 2020 the Kentucky Legislature enacted House Bill 195, codified as [424.145 KRS](#), allowing a local government to post public notices on a "notice Web site" maintained by the local government or a third party under contract with the local government. The local government shall publish a small advertisement in a hard-copy newspaper alerting the public that full notice is available on the notice website. Further considerations are addressed, such as providing full URL addresses, creating an affidavit for proof of publication, and other accessibility concerns. The committee discussed the legislation at length and requested draft legislation similar to Kentucky HB 195.

NARROWING THE SCOPE: LOCAL GOVERNMENT NOTICES ONLY

The committee reviewed [PD 12](#), a bill draft to allow local governments to publish public notices to a "notice website" maintained by the local government. PD 12 only addresses notices originating from a

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county or a municipality and does not address state agency, court, or school district notices. The committee received an [explanation of PD 12](#) with additional analysis, considerations, and questions.

After discussing the draft at length during the July and September 2022 meetings, the committee decided to table PD 12 after hearing public comment that the draft needed additional work before introduction. Testimony highlighted further concerns for the reach, validity, and security of electronic public notices while also noting that newspapers have successfully met statutory requirements for over 100 years. Further discussion noted the ability of newspaper organizations to currently provide both print and digital editions while also posting public notice to the Montana Newspaper Association's public record database⁷, as mentioned on page 2 of this report.

CONCLUSIONS

Findings:

- Citizens increasingly use methods other than a hard-copy newspaper to access news and local information. Requiring public notice only in print sources may reduce the reach of public notices, possibly risking less transparency of governmental actions.
- The organization of the Montana Code Annotated creates difficulties when drafting a simple solution to allow an electronic option for all public notices. Further study is required to allow for electronic options of all types of notices.

Recommendations:

- Due to time and capacity restraints, the committee suggests another committee or group continue the study of public notices generally, possibly drafting legislation to address all public notices.

Results

The committee moved to introduce PD 7 to the 68th Legislature.

PD 7 removes the requirement for a county to publish notice in a newspaper located in an adjacent county if no newspaper exists in the county. The bill allows a county without a county newspaper to post notice in three public places, one of which may be the county's website. Cities without newspaper access may also utilize a city website as one of three public posting places.

⁷ www.mtpublicnotices.com/mna/legals

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APPENDIX A:

LOCAL GOVERNMENT INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Local Government Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

Senate Members

Senator Mark Sweeney (D), Vice Chair

July 2021-May 2022

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