

1 HOUSE JOINT RESOLUTION NO. 23

2 INTRODUCED BY A. OLSEN

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA REQUESTING AN INTERIM STUDY ON PUBLIC ACCESS TO OFFICIAL MONTANA LEGAL
6 MATERIALS ONLINE OR IN A SEPARATE DIGITAL FORMAT THROUGH THE ADOPTION OF THE
7 UNIFORM ELECTRONIC LEGAL MATERIAL ACT; AND REQUIRING THAT THE FINAL RESULTS OF THE
8 STUDY BE REPORTED TO THE 68TH LEGISLATURE.
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10 WHEREAS, Article II, section 1, of the Montana Constitution provides that all political power is vested in
11 and derived from the people and that all government of right originates with the people, is founded upon their
12 will only, and is instituted solely for the good of the whole; and

13 WHEREAS, Article II, sections 8 and 9, of the Montana Constitution provide that the public has the right
14 to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation
15 of the agencies prior to the final decision and that no person shall be deprived of the right to examine
16 documents or to observe the deliberations of all public bodies or agencies of state government and its
17 subdivisions; and

18 WHEREAS, Montana citizens are the true authors of the law because the laws of Montana derive their
19 authority from the constitutional consent of the public expressed through the democratic process and, as such,
20 Montana citizens have a constitutional right to unfettered access to those official laws; and

21 WHEREAS, at the most basic level, free and open public access to Montana's official laws that are
22 reliable and accurate is necessary to create transparency and promote accountability, which are fundamental to
23 a functional participatory democracy; and

24 WHEREAS, as states have increasingly realized the benefits of technology to promote accountability,
25 transparency, and public participation by expanding online access to legal materials, it has become clear states
26 must also take steps to ensure that the information is reliable, accurate, and secure and ensure that online legal
27 materials provide the same level of trustworthiness traditionally associated only with print publication; and

28 WHEREAS, every state, including Montana, provides online public access to its statutory materials and

1 many states, including Montana, provide online public access to their administrative rules and state supreme
2 court opinions; and

3 WHEREAS, unofficial, unauthenticated online and digital versions of state legal materials that are used
4 extensively by the public present issues of authenticity, including whether the digital information has been
5 altered, intentionally or not, from its original form; questions regarding the responsibility for mistakes that are
6 made in the online content; questions on how often the information is updated; and concerns about whether the
7 information online is secure; and

8 WHEREAS, if the placement of a legal material resource online or in a separate digital format is not
9 officially mandated or approved by a statute or rule, its reliability and accuracy are difficult for the public and the
10 legal community to gauge; and

11 WHEREAS, Montana, similar to the approach of other states, provides a disclaimer that Montana's
12 website online version of the Montana Code Annotated is not official and that pursuant to section 1-11-103(7),
13 MCA, the only official source is the printed Montana Code Annotated and that the printed Montana Code
14 Annotated is the only publication of the statutes that may be used in public documents; and

15 WHEREAS, with the fast-paced evolution of digital technology and online access to states' legal
16 materials, the practical and legal use of printed legal materials has dramatically decreased over time and those
17 printed legal materials become outdated almost instantaneously; and

18 WHEREAS, 20 states and the District of Columbia have adopted the Uniform Electronic Legal Material
19 Act and now provide public access to official authenticated versions of their legal materials; and

20 WHEREAS, a number of neighboring states, including North Dakota, Idaho, Washington, Oregon,
21 Utah, Colorado, Arizona, and Nevada, have adopted and implemented the Uniform Electronic Legal Material
22 Act; and

23 WHEREAS, it is time for the Montana Legislature to thoughtfully evaluate the benefits and costs of
24 adopting the Uniform Electronic Legal Material Act to ensure that Montanans' constitutional right to access to
25 the official laws of Montana is fulfilled.

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27 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF
28 THE STATE OF MONTANA:

1 That the Legislative Council be requested to designate an appropriate interim committee or statutory
2 committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine public access to
3 official Montana legal materials online or in a separate digital format through the adoption of the Uniform
4 Electronic Legal Material Act.

5 BE IT FURTHER RESOLVED, that the study examine:

6 (1) other states' experiences with implementing and adopting the Uniform Electronic Legal Material
7 Act, including but not limited to:

8 (a) the fiscal impacts of implementing the provisions of the Uniform Electronic Legal Material Act;

9 (b) public access to legal material in the official electronic record;

10 (c) authentication of official electronic records;

11 (d) preservation and security of legal materials in the official electronic record; and

12 (e) online and digital legal material subscription processes;

13 (2) the existing Montana codification, annotation, and publication processes to ensure a coordinated
14 and seamless transition with the adoption of the Uniform Electronic Legal Material Act;

15 (3) the scope and definition of legal material in the official electronic record to potentially include:

16 (a) the Constitution of the State of Montana;

17 (b) the Laws of Montana, also known as the session laws;

18 (c) the Montana Code Annotated;

19 (d) the Administrative Rules of Montana and the Montana Administrative Register;

20 (e) reported decisions of the Montana Supreme Court; and

21 (f) Montana court rules.

22 BE IT FURTHER RESOLVED, that the committee request participation of stakeholders in this study
23 process, including the Office of the Secretary of State, the Clerk of the Supreme Court, the Court
24 Administrator's Office of the Montana Supreme Court, the State Law Librarian, the University of Montana Law
25 Librarian, a Montana Uniform Law Commissioner, the Code Commissioner, the Office of Legislative Information
26 Systems within the Legislative Services Division, people with expertise in public access to Montana legal
27 materials online or in a separate digital format, and other interested parties as determined by the committee.

28 BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be

1 presented to and reviewed by an appropriate committee designated by the Legislative Council.

2 BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review
3 requirements, be concluded prior to September 15, 2022.

4 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,
5 comments, or recommendations of the appropriate committee, be reported to the 68th Legislature.

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