

LC10: A BILL DRAFT TO ALLOW ELECTRONIC PUBLIC NOTICE

OVERVIEW

HISTORY

During the 2021 session, Senator Jacobson originally requested LC10 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 decision was made to redirect the topic into a study resolution to further investigate public notice delivery and distribution. The Local Government Interim Committee is now tasked with fulfilling the directives of [SJ23](#), the study resolution born of the original bill draft request, LC10. The committee may find the original draft language of LC10 a good starting point to begin its study into electronic public notice.

Originally, LC10 was drafted as a bill but was reconfigured into a study resolution prior to introduction.

This document is intended to provide an overview of the bill. To access the entirety of the draft, please access the [LC10 online version](#).

LC10 BASICS

LC10 amends 287 sections of code, and while the number of sections amended is significant, the basic outline of the draft is fairly simple.

The bill draft attempts 2 main objectives:

1. Create a definition for a "qualified online publication" to capture the type of publication deemed appropriate for electronic public notice; and
2. Enable state and local entities to choose a qualified online publication for public notices currently required to be published in a newspaper.

The definition

LC10 amends [1-1-201, MCA](#) to add the definition of "qualified online publication". The placement of the definition in this section is significant since the title of the section is "Terms of wide applicability" and subsection (1) reads: "Unless the context requires otherwise, *the following definitions apply in the Montana Code Annotated.*"¹ Adding the definition to 1-1-201 allows the definition's authority to carry through the entirety of the MCA without the need to include additional references or repeated definitions.

The definition reads as follows:

(c) "Qualified online publication" means an electronic publication meeting the requirements of **7-1-2121(4)** where the boundaries of the county in which the electronic publication has been timely filed as provided in **7-1-2121(4)(a)(vi)** partially or wholly encompass the principal area or entity affected by the public notice. However, when a municipality as defined by 7-1-4121 is required to publish notice, the term means an electronic publication meeting the requirements of **7-1-4127(4)**.

To fully understand the definition, the amended version of 7-1-2121 must be consulted (the new language is also added to 7-1-4127 to apply to municipalities as well):

(Page 8 of draft) **Section 10.** Section 7-1-2121, MCA, is amended to read:

"7-1-2121. Publication and content of notice -- proof of publication. (1) Unless otherwise specifically provided by law and except as provided in 13-1-108, whenever a local government unit other than a municipality is required to give notice by publication, this section applies.

(2) Publication must be in a newspaper meeting the qualifications of subsections (3) and (4), ~~except that (5) or in an electronic publication meeting the qualifications of subsections (4) and (5).~~ However, in a county where a newspaper or electronic publication does not meet these qualifications, publication must be made in a qualified newspaper or qualified online publication published in an adjacent county. If there is no qualified newspaper and no qualified online publication in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(3) (a) The newspaper must:

¹ Emphasis added.

- (i) be of general circulation;
- (ii) be published at least once a week;
- (iii) be published in the county where the hearing or other action will take place; and
- (iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:
 - (A) circulation for the prior 12 months;
 - (B) a statement of net distribution;
 - (C) itemization of the circulation that is paid and that is free; and
 - (D) the method of distribution.
- (b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(4) (a) A qualified online publication is an electronic publication that must:

- (i) be published on an internet website;
- (ii) have as its primary purpose the dissemination of news of general character;
- (iii) routinely publish content specifically related to the county where the hearing or other action will take place;
- (iv) publish new content on a daily or weekly basis;
- (v) have been published for at least 52 consecutive weeks; and
- (vi) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:
 - (A) a statement certifying that the electronic publication meets the requirements of (4)(a)(i) through (4)(a)(v);
 - (B) the number of unique site visitors for the prior 12 months;
 - (C) the number of subscribers for the prior 12 months, if applicable;
 - (D) an itemization of subscribers that are paid or free, if applicable; and
 - (E) any methods of distribution in addition to the website, if applicable.

(b) For the purposes of this subsection (4), a qualified online publication does not include an electronic publication produced or published by a local government unit.

(c) A qualified online publication must be construed to be published in the county in which the information has been timely filed with the clerk and recorder as provided in subsection (4)(a)(vi). If a qualified online publication has not

timely filed the information required as provided in subsection (4)(a)(vi) with the clerk and recorder of a particular county, it may not be construed to be published in that county.

~~(4)~~(5) In the case of a contract award:

(a) the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract; or

(b) the qualified online publication must have been published online continuously for the 12 months preceding the awarding of the contract and during that time must have routinely published news of general character related to the specific county in which the local government unit awarding the contract is located.

~~(5)~~(6) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

~~(6)~~(7) The A notice published in a newspaper must be published twice, with at least 6 days separating each publication. A notice published in a qualified online publication must remain published and available for viewing for at least 7 days.

~~(7)~~(8) The published notice must contain:

- (a) the date, time, and place of the hearing or other action;
- (b) a brief statement of the action to be taken;
- (c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and
- (d) any other information required by the specific section requiring notice by publication.

~~(8)~~(9) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

~~(9)~~(10) Proof of the publication or posting of any notice may be made by affidavit of:

- (a) the owner, publisher, printer, or clerk of the newspaper;
- (b) the owner, editor, publisher, or other representative of the qualified online publication; or
- (c) of the person posting the notice.

~~(10)~~(11) If the newspaper fails to publish a second notice or if a notice posted by a qualified online publication

fails to remain published and available for viewing for at least 7 days, the local government unit must be considered to have met the requirements of this section as long as the local government unit submitted the required information prior to the submission deadline and the notice was posted in three public places in the county that were designated by resolution and, if the county has an active website, was posted on the county's website at least 6 days prior to the hearing or other action for which notice was required."

APPLICATION

After establishing the definition of "qualified online publication", LC10 adds the term in most places where "newspaper" is used in relation to public notices that either:

1. Originate from a local government (i.e. city, county, special district, etc.); or
2. Are intended for a local audience (i.e. a state agency notice that will affect a local area).

Examples:

Notice originating from a local entity:

(Page 5 of draft) **Section 6.** Section 2-7-521, MCA, is amended to read:

"2-7-521. Publication. (1) (a) After the expiration of the 30-day period provided for in 2-7-515(1), the local government entity shall send a copy of each audit report to a qualified online publication or newspaper of general circulation in the area of the local government entity. However, each county audit report must be sent to the official newspaper or qualified online publication of the county.

Notice intended for a local audience:

(Page 144 of draft) **Section 165.** Section 70-28-208, MCA, is amended to read:

"70-28-208. Publication and posting of summons. (1) The summons ~~shall~~must be published in a qualified online publication or newspaper of general circulation published in the county in which the action is brought. The ~~newspaper publication~~ in which ~~such publication~~ the summons is to be made ~~shall~~must be designated by an order of the court ~~or judge thereof to~~ in which the action was brought, and it must be signed and filed with the clerk. No other order for the publication of the summons ~~shall be~~ is necessary, nor ~~shall any~~ is an affidavit ~~therefor~~ be required, nor is there a need

~~any~~ for a copy of the complaint to be served, except as hereinafter required from here. ~~The~~ In a qualified online publication, the summons must remain published and available for viewing for at least 5 weeks. In a newspaper, the summons shall ~~must~~ be published at least once a week for a period of 5 weeks and to. ~~To each publication thereof shall of~~ the summons must be appended a memorandum, signed by the plaintiff's attorney, in substance as follows "The following persons are said to claim an interest in or lien upon ~~said~~ the property, adverse to plaintiff." (Give names and addresses as above provided.)

(2) A copy of the summons together with a copy of the foregoing memorandum ~~shall~~ must be posted in a conspicuous place on each separate parcel of the property described in the complaint within 10 days after the first publication of the summons."

Example providing timeline clarification:

(Page 150 of draft) **Section 173.** Section 72-14-205, MCA, is amended to read:

"72-14-205. Unsold intangible personal property -- how disposed of -- auction sale. (1) If the intangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate, then the personal representative shall deliver all of the property to the department of revenue with a statement setting forth the name of the estate to which it belongs. The department shall, within 1 year of the receipt of the property, sell the property to the highest bidder at a public auction sale at the department's office in Helena, Montana.

(2) The department shall give notice of the sale by publication in a qualified online publication in Helena or in a Helena newspaper. If published in a qualified online publication, the notice must remain published and available for viewing for at least 2 successive weeks, and the last day of the required 2-week notice must be at least 20 days prior to the date of the sale. If published in a newspaper, the notice must be published once a week for 2 successive weeks. ~~The, and the~~ last publication must be at least 20 days prior to the date of the sale. The notice must give the time and place of the sale and must contain a list and description of the stocks, bonds, securities, or other intangible personal property to be sold."

POSSIBLE QUESTIONS TO CONSIDER:

The following is not an exhaustive list of questions but may help elicit thought and considerations when determining the scope of the SJ23 study.

"Ground level"/concrete questions:

- Should all public notice types be revised, or is more focus needed?
- Can, or should, different types of notices be noticed differently (legal vs. meeting notices, notices originating from different entities, etc.)?
- Do notice periods need to be reviewed? Would the ability to provide electronic notice change the need for, or length of, timelines?
- Would posting to websites (different than online publication) suffice for public notices? Challenges may exist to guarantee, gauge, and ensure readership of a website posting.
- Can all, or most, public notice statutes be consolidated or made more consistent? Is there a need for certain notices to be distributed differently and have different timelines?
- Do local governments experience financial challenges regarding current public notice requirements?

"Higher level"/more abstract questions:

- How to determine the intended "audience" of a public notice and ensure an online publication has a similar readership. Additionally, is it possible to determine the actual readership of an online publication?
- What is the best way to determine and account for print vs. online differences in notice validity, timeliness, and reach?
- What is the proper "carrier" for public notices? Should public entities work to get the message to the people (distribute), or could the public be made aware of a state-wide repository where notices are posted? Perhaps both?
- How can all governmental entities ensure better notice delivery, i.e. how to increase actual readership of notices in addition to a wide distribution?
- How is the majority of the general public receiving news? Has the appetite and preference for news/public notice changed on a social scale? What trends might we see in the future?