

PD12 – EXPLANATION AND CONSIDERATIONS

BACKGROUND

In March, the committee requested a bill draft to allow a local government to choose an electronic publication method other than a newspaper for public notices. PD12 attempts to incorporate language used in Kentucky statute [424.145 KRS](#) allowing for alternative methods of notification using a website.

The committee requested a simple and short draft that accommodates both print and electronic publication. To meet that goal, PD12 only applies to public notices originating from a county or municipal government. The draft does not address all types of public notice.

While PD12 provides options for local governments, it might not be considered a "light lift". The bill draft is lengthy (60 pages) because multiple statutes, when requiring public notice, use the phrase "published *in a newspaper*". To meet the committee's goals, statutes regarding notices originating from a local government that include the phrase "in a newspaper" require revision, which in turn requires a lengthy bill. Additionally, many questions and uncertainties exist in the current draft. If the committee decides to continue working on PD12, a significant amount of additional committee time will need to be devoted to the topic.

Public notices are required from different entities and for different purposes, but the general purpose of public notice is to alert the public of governmental actions that may affect them. When considering amending public notice statutes, it may be helpful to consider all the types of meetings, hearings, and actions that could be affected. As written, PD12 would allow electronic notification on a website for the following types of notice from a county or municipality (*list is not exhaustive*):

- passage of ordinances and resolutions
- notice of alteration of county boundaries
- creating or dissolving a resort district

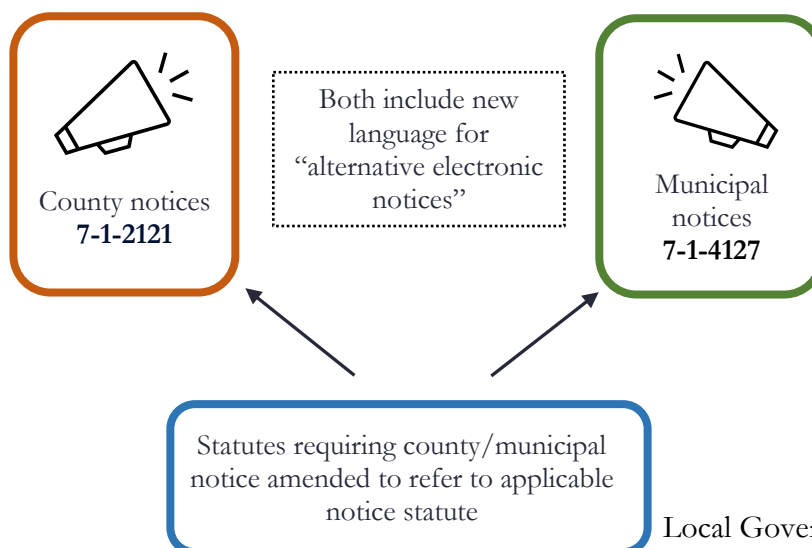
PD12 only applies to public notices originating from a county or municipal government. The draft does not address all public notice.

- hearings on budgets
- sale of county or municipal property
- creating, funding, or dissolving special districts
- bids for certain purchases and construction projects
- creating, consolidating, or dissolving rural fire districts or fire service areas
- issuing tax deeds
- establishing zoning districts

PD12 does not affect notices originating from state agencies, schools, or courts, meaning a newspaper remains the required publication method for notices such as (*list is not exhaustive*):

- various types of legal summons
- hearings for a legal name change
- hearings for parental rights cases
- notice of uncollectible child support debts
- notice to locate unknown parent in child custody case
- notice of unclaimed tangible personal property in the possession of a public safety officer
- hearing for executive clemency
- meetings of school boards
- notice for the removal and sale of abandoned vehicles
- hearing on a hazardous waste site
- hearings and proceedings related to mine reclamation
- notice of order of existing water rights claims
- notices related to various water compacts

PD12: THE BASICS



PD12 Explanation and Considerations

What PD12 does:	What PD12 does NOT do:
<ul style="list-style-type: none"> Allows a county or municipality to choose either a newspaper or its own website to publish notices 	<ul style="list-style-type: none"> Affect notices originating from any entity not affiliated with a county or municipality (e.g., state agencies, courts, private organizations)
<ul style="list-style-type: none"> Requires a LG to publish a small ad in a newspaper if using electronic notice 	<ul style="list-style-type: none"> Allow for publication in "online-only publications" – online news sources that are not considered "newspapers"
<ul style="list-style-type: none"> Provides language regarding accessibility needs 	<ul style="list-style-type: none"> Consolidate all the notices citizens of a local area may receive
<ul style="list-style-type: none"> Provides language regarding proof of publication for electronic notices (affidavit) 	<ul style="list-style-type: none"> Change the timeline of publication for various notices (retaining original timelines was the intent, but multiple questions are posed in the draft)
<ul style="list-style-type: none"> Revises statutes requiring publication in a newspaper and instead references either the county (7-1-2121) or municipal (7-1-4127) notice statute 	<ul style="list-style-type: none"> Mandate a LG to publish electronically. A LG could pick a type of notice to publish electronically while keeping some notices published in a newspaper

QUESTIONS AND CONSIDERATIONS

- PD12 only provides an electronic option for notices originating from a local government. This does not mean the constituents living in that local area will receive ALL their notices electronically. Notices provided by other state agencies, courts, schools, etc. require publication in a newspaper. Will this create confusion for citizens (i.e., uncertainty of where to find all notices)?
- Unlike LC10 from 2021, PD12 does not address "online publications". As drafted, only a newspaper or a website operated by a local government may publish notices. Does the committee want to amend the bill to include "online publications"?
- Many statutes contain requirements for a timeline of publication. For example, a notice must be published "once a week for two weeks" or a notice must be published "for four weeks". How does this timeline work with a notice posted to a website? Can a notice on a website be published more than once a week? After a website notice is published, may it be assumed that it is continually published for the required duration? Does the current language in the draft create conflict?

Options:

- Keep "publish once a week for X weeks" – *may add confusion for electronic notices*, OR
- Remove "once a week" and instead state "publish for X weeks" – *does this lack of clarity and direction allow a newspaper to not publish the required number of times?*



4. [Title 18 Chapter 7](#) governs legal notices for public contracts and contains a statute that may warrant further examination. PD12 currently does not amend 18-7-201.

18-7-201. Requirements for choice of newspaper — price. (1) In all cases and instances where any publication is required by law or is duly authorized to be made, executed, or accomplished by, for, or on behalf of the state of Montana or **any of the institutions of said state** or any of the departments, boards, bureaus, or commissions thereof or any of the officers, agents, or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published in the state of Montana and of general bona fide and paid circulation with second-class mailing privilege and having been printed and published continuously in the state of Montana for at least 12 months immediately preceding such publication.

(2) The price for such publication and by whomsoever accomplished shall not exceed the minimum going rate charged any other advertiser for the same publication set in the same sized type and published for the same number of insertions.

Does this statute extend to local governments? 18-1-101 defines "public agency" to include "political subdivisions" of the state, which are often considered counties and municipalities. However, the language in 18-7-201 does not include "public agency", so the application of 18-7-201 may be unclear. If 18-1-201 does apply to local governments, additional amendments may be required.

18-1-101 Definitions

(2)(c) (i) "**Public agency**" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of **this state and its political subdivisions**, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

18-1-102. State contracts to lowest bidder — reciprocity. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall, except as provided in Title 18, chapter 2, part 5, award:

(b) a public contract for the purchase of goods to the lowest responsible bidder without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

STATUTES NOT INCLUDED, BUT MAY NEED FURTHER CONSIDERATION

The following statutes may not clearly originate from a county or municipality but are closely linked. Further direction is needed to determine if the statutes must be included in PD12.

Statute	Description	Analysis
2-2-302	Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice.	The statute doesn't apply to certain school districts or counties if the school district or county publishes a notice.
2-7-521	Publication of local government audits	Audits originate from the Department of Administration, but the local government entity "shall send a copy of each audit report to a newspaper"
2-9-523	Serve by notice to release surety bond of county of municipal officer	Notice must be served on the principal, but if the principal can not be found, it may be noticed in a newspaper. This notice may or may not originate from a local government entity, depending on who holds the surety bond.
13-27-311	Secretary of state to publish constitutional initiative language in all counties	PD12 amends other election related notices. While this notice does not originate from a local government, may it help create consistency if it were amended?
76-15-103	Definition of due notice in relation to conservation districts	Definition states "published...in a newspaper or other publication of general circulation".
76-15-1006	Conservation districts	Is a conservation district an entity of a county or the Department of Natural Resources?
76-16-316	Sale of abandoned livestock (county sheriff)	County sheriff must provide notice in a newspaper, so may be considered a county action. However, the statute is located in the part governing grazing districts, which are not included in PD12.

STATUTES NOT INCLUDED

NOTICES ORIGINATING FROM A STATE AGENCY, BOARD, COMMISSION, OR OTHER STATE ENTITY (101 STATUTES):

2-3-104	2-5-105	2-5-106	2-16-117	2-18-711	10-2-111	15-7-139	16-4-207	16-4-212
16-6-106	17-5-1526	17-5-1527	18-2-301	18-7-201	18-11-103	30-14-211	32-1-384	32-1-531
33-2-120	33-10-109	35-6-104	35-8-914	40-6-407	41-3-429	44-14-101	50-4-709	50-5-302
53-21-1402	60-2-107	60-2-245	60-4-203	60-4-216	67-1-302	69-2-212	69-3-303	69-3-1605
69-12-322	70-9-810	70-9-812	72-14-205	72-14-206	75-5-307	75-5-316	75-8-106	75-10-516
75-10-713	75-10-735	75-10-745	75-20-303	76-5-204	76-5-301	76-4-201	76-13-204	76-16-202
76-16-211	76-16-212	76-16-407	76-22-105	77-1-1114	77-2-215	77-2-322	77-4-205	80-6-104
81-3-106	81-4-603	82-4-231	82-4-232	82-4-239	82-4-338	82-4-353	82-4-371	82-4-445
82-11-122	82-11-141	85-1-203	85-2-222	85-2-307	85-2-319	85-2-322	85-2-506	85-3-210
85-3-424	85-7-402	85-7-1437	85-7-1502	85-7-1910	85-7-1914	85-7-1941	85-7-2023	85-7-2107
85-8-361	85-8-615	87-1-209	87-1-511	87-1-714	87-5-402	90-4-405	90-6-311	90-7-225
90-7-227	90-7-229							

NOTICES ORIGINATING FROM A FROM A COURT OR AN AGENT OF A COURT (42 STATUTES):

23-5-181	25-3-502	25-13-701	26-1-1011	26-1-1012	27-31-201	31-2-221	32-1-807	35-16-404
39-3-515	44-12-210	46-23-302	46-23-303	46-23-304	46-23-508	50-62-103	53-6-176	70-28-208
72-1-301	72-3-801	72-38-209	81-5-104	82-1-202	85-2-132	85-2-213	85-2-232	85-2-233
85-2-237	85-7-105	85-7-1001	85-7-1005	85-7-1805	85-7-1809	85-7-1811	85-7-1823	85-7-2017
85-8-111	85-8-115	85-8-323	85-8-345	85-8-351	85-8-402			

NOTICES ORIGINATING FROM A SCHOOL DISTRICT (14 STATUTES):

20-3-205	20-3-337	20-3-341	20-9-115	20-9-116	20-9-164	20-9-204	20-9-431	20-10-125
20-15-104	20-20-108	20-20-204	20-20-416	20-25-307				



PD12 Explanation and Considerations

OTHER TYPES OF NOTICE NOT INCLUDED IN PD12 (32 STATUTES):

Most notices listed below originate from a private citizen, private entity, or other organization not previously listed.

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| 15-1-407 (Taxpayer protest) | 40-6-1003 (Parental/child custody) |
| 13-38-205 (County central committee meeting notices) | 70-6-411 (Notice to sell items left in storage) |
| 22-3-505 (Museum lending notice) | 70-6-607 (Storage rental default) |
| 30-7-210 (Warehouse lien) | 70-9-501 (Sale of items left at hotels/lodgings) |
| 32-1-321 (Creation of a corporation) | 70-30-321 (Sale of property acquired for public use by private seller) |
| 32-1-361 (Change of a state to a national bank) | 71-1-224 (Sale of foreclosed real property) |
| 32-1-374 (Change of a national bank to a state bank) | 71-1-315 (Sale of foreclosed trust deed property) |
| 33-2-1346 (Insurance liquidation) | 71-3-533 (Notice of completion of construction lien) |
| 35-2-115 (Creation of a non-profit entity) | 71-3-1403 (Sale of a hotel/inn to a guest) |
| 35-8-909 (Dissolution of a limited liability corporation) | 75-10-441 (Owner of a hazardous waste site) |
| 35-12-1214 (Dissolution of a limited liability partnership) | 75-20-207 (Owner of electronic transmission lines) |
| 35-14-1407 (Dissolution of a corporation) | 75-20-211 (Application for electronic transmission lines) |
| 35-17-305 (Board of psychologists meetings) | 82-4-222 (Mining operatory permit application) |
| 35-18-405 (Dissolution of a cooperative) | 82-4-226 (Prospecting permit application results) |
| 35-21-822 (Removal of mausoleum property dedication) | 82-4-432 (Open cut mining applicant) |
| 39-2-1003 (Employer notice of closure) | 85-2-410 (Short term water right lessee) |