

ARKANSAS GENERAL ASSEMBLY

Representative Lanny Fite, Chair



Representative Fredrick Love, Vice-Chair

HOUSE INTERIM COMMITTEE ON
CITY, COUNTY, AND LOCAL AFFAIRS

November 12, 2020

Senator Cecile Bledsoe, Co-Chair
Representative Jeff Wardlaw, Co-Chair
Arkansas Legislative Council
State Capitol, Room 315
Little Rock, Arkansas 72201

RE: Reporting Requirement –Interim Study Proposal (ISP) 2019-131

Senator Bledsoe and Representative Wardlaw:

Pursuant to the reporting requirement for ISP 2019-131, the House City, County, and Local Affairs Committee is required to submit a final written report to Legislative Council on or before December 1, 2020, on the study of public notice and participation in the environmental permitting process. Attached is the required report, as well as a copy of ISP 2019-131.

Respectfully submitted,

Lanny Fite

Representative Lanny Fite, Co-Chair

Fredrick Love

Representative Fredrick Love, Vice-Chair

Study and Recommendations of Interim Study Proposal 2019-131

Pursuant to Interim Study Proposal 2019-131, Section (a) “The House City, County and Local Affairs Committee shall meet to conduct a study of public notice and participation in the environmental permitting process.”

The House City, County, and Local Affairs Committee met on August 11, 2020, and September 22, 2020, to study and review the adequacy of the public notice and procedures regarding public participation for each type of environmental permit, certification, authorization, approval, or coverage issued by the agencies listed below.

- The Division of Environmental Quality of the Department of Energy and Environment
- The Department of Health
- The Division of Labor of the Department of Labor and Licensing
- The Arkansas Natural Resources Commission of the Department of Agriculture
- The Oil and Gas Commission of the Department of Energy and Environment

In addition to the agencies listed above, the Arkansas Press Association, Arkansas Democrat Gazette, Information Network of Arkansas, and Arkansas Department of Transformation and Shared Services, participated in the study to review the following elements:

1. Examination of methods by which public notice is given by the agencies listed above with regard to environmental permits, certifications, authorizations, approvals, or coverage

- ❖ Permits have different types of notice provisions and different types of public participation provisions. The methods used for public notices varies depending on the type of notices and agency requirements. For example, as it relates to the public comment period, the agencies adhere to the Administrative Procedures Act.

2. The efficacy of public notice required under current Arkansas and federal law

- ❖ Across state, city, and county government, there are approximately six-hundred (600) statutes that require references to the newspaper or printed notices. It was noted that some guidelines have been in place for thirty (30) years, and it is an onerous task to follow the guidelines under the current law with ongoing complaints from citizens.

3. Best practices in other states for providing public notice

- ❖ All fifty (50) states require public notices in some format to be published in newspapers. Some states publish their notices on websites in addition to newspapers. No other state has moved all of its public notices onto a state website.

4. Who is being reached by current forms of public notice given by the agencies listed above?

- ❖ The Arkansas Press Association believes a comprehensive and fair study of public notices will demonstrate newspapers have been and will continue to be the best way to keep the public informed. Approximately, 25% of the population does not have adequate internet access. Therefore, even if the state created a website of public notices and listed it on every search engine, many in the state would never be able to access the site.

5. Whether the required public notice sufficiently accounts for actions regarding environmental permits, certifications, authorizations, approvals, and coverage issued by the agencies listed in this ISP that pose a high likelihood of implicating the interests of third parties

- ❖ Based on discussions, it appears the required public notice does not sufficiently account for actions regarding environmental permits, certifications, authorizations, approvals, and coverage issued by the agencies listed in this ISP could possibly implicate the interests of third parties.

6. Whether the current requirements for public participation regarding issuance of environmental permits, certifications, authorizations, approvals, or coverage sufficiently provide for participation by interested third parties

- ❖ It appears the current requirements for public participation regarding issuance of environmental permits, certifications, authorizations, approvals, or coverage does not sufficiently provide for participation by interested third parties and requires further study.

RECOMMENDATIONS

- The Arkansas Press Association could add public notices to their website. All public notices are uploaded free of charge, which is an added value to the State. Fourteen (14) states have enacted laws for publishers to upload notices to press association's websites. The creation of any new website would be a duplicative effort.
- When contemplating what a multi-agency public notice system would include if it were enhanced, there are several options to consider such as multiple publishing methods, public comments, and integration of government websites. There are many agencies that

have their own social media site. Some of these techniques would extend the reach of some systems.

- Review the list of public notices that are published to possibly eliminate those that are no longer needed. This would require legislation to modify public notice requirements.
- Create legislation that allows all agencies to submit and respond to notices with their own rules and regulations.

CONCLUSION

It was concluded that in order to make necessary changes to the public notice and participation in the environmental permitting process the following would be necessary:

- An Independent study on how to effectively notify the public of public notices.
- Perform a cost analysis comparison for a state-run website versus one by a private petitioner.

2 State of Arkansas

3 92nd General Assembly

4 First Extraordinary Session, 2019

A Bill

CRH/CRH

HOUSE BILL

5
6 By: Representative Della Rosa

7 Filed with: House Committee on City, County, and Local Affairs

8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

10 AN ACT TO CREATE A STUDY OF PUBLIC NOTICE AND
11 PARTICIPATION IN THE ENVIRONMENTAL PERMITTING
12 PROCESS; AND FOR OTHER PURPOSES.

13 Subtitle

14
15 TO CREATE A STUDY OF PUBLIC NOTICE AND
16 PARTICIPATION IN THE ENVIRONMENTAL
17 PERMITTING PROCESS.
18

19
20
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Study of public notice
24 and participation in the environmental permitting process – Creation –
25 Purpose.

26 (a) The House Committee on City, County, and Local Affairs shall meet
27 to conduct a study of public notice and participation in the environmental
28 permitting process.

29 (b)(1) The purpose of the study is to study the adequacy of the public
30 notice and procedures regarding public participation for each type of
31 environmental permit, certification, authorization, approval, or coverage
32 issued by:

33 (A) The Division of Environmental Quality of the
34 Department of Energy and Environment;

35 (B) The Department of Health;

1 (C) The Division of Labor of the Department of Labor and
2 Licensing;

3 (D) The Arkansas Natural Resources Commission of the
4 Department of Agriculture; and

5 (E) The Oil and Gas Commission of the Department of Energy
6 and Environment.

7 (2) The study shall include without limitation:

8 (A) Examination of methods by which public notice is given
9 by the agencies listed in subdivision (b)(1) of this section with regard to
10 environmental permits, certifications, authorizations, approvals, or
11 coverage;

12 (B) The efficacy of public notice required under current
13 Arkansas and federal law;

14 (C) Best practices in other states for providing public
15 notice;

16 (D) Who is being reached by current forms of public notice
17 given by the agencies listed in subdivision (b)(1) of this section;

18 (E) Whether the required public notice sufficiently
19 accounts for actions regarding environmental permits, certifications,
20 authorizations, approvals, and coverage issued by the agencies listed in
21 subdivision (b)(1) of this section that pose a high likelihood of implicating
22 the interests of third parties; and

23 (F) Whether the current requirements for public
24 participation regarding issuance of environmental permits, certifications,
25 authorizations, approvals, or coverage sufficiently provide for participation
26 by interested third parties.

27 (c)(1) Within sixty (60) days of the effective date of this act, the
28 Division of Environmental Quality of the Department of Energy and
29 Environment, the Department of Health, the Division of Labor of the
30 Department of Labor and Licensing, the Arkansas Natural Resources Commission
31 of the Department of Agriculture, and the Oil and Gas Commission of the
32 Department of Energy and Environment shall submit to the House Committee on
33 City, County, and Local Affairs a report of each type of environmental
34 permit, certification, authorization, approval, or coverage issued by the
35 agencies.

1 (2) A report under subdivision (c)(1) of this section shall
2 include without limitation:

3 (A) The name of the permit, certification, authorization,
4 approval, or coverage;

5 (B) The state or federal authorizing law and corresponding
6 rules or regulations for the permit, certification, authorization, approval,
7 or coverage;

8 (C) A description of the public notice that is required
9 and the public notice that is provided, if more than the minimum required,
10 for each permit, certification, authorization, approval, or coverage; and

11 (D) A description of the procedures for public
12 participation that are required and the procedures for public participation
13 that are provided, if more than the minimum is required, for each permit,
14 certification, authorization, approval, or coverage.

15 (d) Meetings for purposes of conducting the study shall be held at
16 least one (1) time every two (2) months but may occur more often at the call
17 of the Chair of the House Committee on City, County, and Local Affairs.

18 (e) On or before December 1, 2020, the House Committee on City,
19 County, and Local Affairs shall submit to the Legislative Council a final
20 written report of its activities, findings, and recommendations with regard
21 to this study under this act, including without limitation:

22 (1) Findings on the adequacy of the public notice requirements
23 and public participation procedures for each type of permit, certification,
24 authorization, approval, or coverage issued by the agencies listed in
25 subdivision (b)(1) of this section; and

26 (2) Recommended draft legislation to address the findings of the
27 study, including recommended legislation directing the agencies listed in
28 subdivision (b)(1) of this section to promulgate administrative rules.

29 (f) The study under this act shall be complete upon submission of the
30 final report to the Legislative Council.

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33 Referred by Representative Della Rosa

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35 Prepared by: CRH/CRH