

MINUTES

**HOUSE & SENATE INTERIM COMMITTEES ON
STATE AGENCIES AND GOVERNMENTAL AFFAIRS
Meeting Jointly**

September 4, 2013

The Senate and House State Agencies and Governmental Affairs Interim Committees met on Wednesday, September 4, 2013, at 10:30 p.m., in Room 151 of the State Capitol.

Members in Attendance

The following committee members attended: Senators Eddie Joe Williams, Chair; Jimmy Hickey, and Bobby Pierce. Representatives Andrea Lea, Chair; Butch Wilkins, Vice Chair; Nate Bell, John Catlett, Jim Dotson, Kim Hammer, Fonda Hawthorne, Mary Hickerson, Debra Hobbs, Karen Hopper, John Hutchison, Josh Miller, Jim Nickels, Betty Overbey, Chris Richey, Wes Wagner, and Bruce Westerman.

Other members attending were: Senators Ronald Caldwell, Eddie Cheatham, Stephanie Flowers, Missy Irvin, Johnny Key, Bill Sample, David Wyatt. Representatives Randy Alexander, Scott Baltz, John Burris, Harold Copenhaver, Dan Douglas, David Hillman, Homer Lenderman, Walls McCrary, Mark McElroy, and Sue Scott.

The House and Senate Interim Committees on State Agencies and Governmental Affairs were called to order by Representative Lea.

Consideration to Adopt Interim Study Proposals

[EXHIBITS E1 – E7]

Representative Lea stated, without objection, the following ISPs were adopted: 2013-094; 2013-121; 2013-125; 2013-153; 2013-154; 2013-155; and 2013-156.

Arkansas Natural Resources Commission (ANRC) – Rules Governing Design and Operation of Dams

[EXHIBIT D; HANDOUT 1]

Randy Young, Arkansas Natural Resources Commission, Director, explained Arkansas developed laws governing dams in 1957, to ensure safety and encourage storing surplus surface water. He explained specific laws concerning dams in the state.

Section 15-22-210 requires anyone constructing or owning a dam to have an ANRC permit. ANRC only issues permits for dams intended for impounding surplus surface water. Arkansas laws require dams to be constructed and maintained in ways that preserve the dam's life; create a reservoir for the permits' designated time; and protect lives and property of persons downstream. Mr. Young cited amendments, from 1989, that made Arkansas's dam laws consistent with national standards.

Any Arkansas dam impounding more than 50 acre-feet and standing taller than 25 feet, requires an ANRC permit. A dam-building permit costs 12¢/acre-foot of the dam's storage. The minimum fee is \$25; the maximum is \$10,000. ANRC charges 1% of the dam's estimated construction cost for a permit-review fee. The minimum permit-review fee is \$100; maximum is \$1,000. These fees generated about \$130,000 last year. Arkansas has 413 permitted dams; 62% pay minimum fees, three pay maximum fees (Lake Maumelle, Lake Fort Smith, and Carpenter Dam).

Regarding a particular dam on Dan Eoff's property in Van Buren County, Mr. Young said the Clean Water Act requires dams this size to have a "401 Permit" from Arkansas Department of Environmental Quality (ADEQ) and a "404 Permit" from the United States Army Corp of Engineers (USACE). Mr. Eoff never purchased either permit before constructing his dam.

Upon notification from the United States Fish & Wildlife Services (USFWS) that Mr. Eoff's dam exists, ANRC employees conducted an inspection. They determined Mr. Eoff's dam is 30-feet tall and situated in a 100-year flood plain. On August 23, 2013, USACE issued a "cease and desist order" to Mr. Eoff;

told him told him constructing the dam is a flagrant violation of the Clean Water Act; and said they are referring enforcement to the Environmental Protection Agency (EPA). On June 10, 2013, EPA's Region 6 issued an administrative order directing Mr. Eoff to remove the dam.

Mr. Young said prior to the EPA's order, ANRC's deputy director inspected the dam and allowed Mr. Eoff until June 1 to sign a consent-administrative order so he could retain a professional engineer to remove the dam and avoid violating the Clean Water Act. Mr. Eoff did not comply, so ANRC conducted a public hearing on July 17, 2013, and formally ordered him to remove the dam. In response, Mr. Eoff filed a judicial review of the order, which is currently in the early stages.

In response to questions by Representative Miller, Mr. Young referred to Handout 1 and explained:

- ANRC enforces state, not federal laws.
- ANRC is Arkansas's coordinating agency for the National Flood Insurance Program.
- "The state" and local administrations notify property owners of restrictions on land in flood plains.
- ANRC's order requires Mr. Eoff to remove the dam at his expense, following removal procedures by professional engineers and approved by ANRC's Chief Engineer.
- The consultant engineer's estimated cost to remove the dam is \$750,000.
- To comply with ANRC's removal requirements, the estimated removal-cost is around \$150,000.
- At this time, ANRC does not know what removal requirements the EPA, USACE, or USFWS will designate, so both estimates might be inconsistent with the actual cost.

In response to a question by Senator Irvin, Mr. Young said a statement from EPA declared "construction in the bank of the south fork of the Little Red River caused increased sediment and siltation, negatively impacting two endangered species; the yellow-cheek darter and speckled pocketbook."

Regarding ANRC's public hearing in Clinton, Representative Miller asked if staff attorneys held a private meeting with the commission prior to the hearing. Mr. Young answered "no," and explained he was with the commission at a dinner/social function prior to the meeting. Representative Miller asked if this is the same meeting where photos of alcoholic beverages being consumed took place. Mr. Young responded "yes." Representative Miller asked Mr. Young if he is aware consuming alcoholic beverages in a municipally-owned building is illegal. Mr. Young responded "no." Representative Miller expressed concerns about the fairness of ANRC public hearings and said he hopes to find workable solutions to the problems Mr. Eoff's dam is creating.

Mr. Young said the biggest problem with Mr. Eoff's dam is being located in the flood plain. If Mr. Eoff hires registered consulting engineers to restudy and/or reset the dam's hydraulics and hydrology; and issue a no-rise certificate, ANRC will issue a permit for the dam. At this time, the dam has multiple problems such as downstream erosion on the face of the stream; unacceptable seepage; inadequate spillway; lack of energy-dissipation features; and no proof of a core, construction methods, or compaction. He noted silt and sediment downstream are signs of a failing dam. The maximum fine ANRC can invoke is \$10,000/day for each violation.

With no further business, the committee adjourned at 11:45 a.m.