

Senate Bill No. 2069

Presented by: Sheri Haugen-Hoffart, Commissioner
Public Service Commission

Before: House Political Subdivisions Committee
Honorable Donald Longmuir, Chair

Date: March 14, 2025

TESTIMONY

Thank you for the opportunity to testify today. My name is Commissioner Sheri Haugen-Hoffart, and I am here on behalf of the Public Service Commission (Commission) to express our support for Senate Bill 2069.

Senate Bill 2069 proposes a straightforward yet meaningful change. In its current form, it would allow state agencies and local political subdivisions the option to meet its obligation to publish legal notices with the Secretary of State, in addition to existing requirements for newspaper publication.

The First Engrossment of SB 2069 provided an appropriation of \$150,000 to the Secretary of State for the purpose of establishing a web app for all required publication notices. This appropriation can pale in comparison to the cost of missed deadlines for developers, additional hearings, and state resources. It is important that, along with the new system, the appropriate funding be made available to accomplish the purpose of this task.

The Commission has an obligation to publish legal hearing notices or notices of opportunity for hearing in the official county newspaper for an impacted

area. This can span multiple counties. The newspaper association also posts the notice on the newspaper association website. If the newspaper fails to publish, it does not appear on the website. These legal notices are crucial to establish Commission jurisdiction to make decisions or issue permits. The Commission is also subject to open meeting laws. This requires the Commission to post meeting notices on the Secretary of State's website - which provides state agencies direct access to ensure its accuracy. Due to the overlap with open meeting requirements, many but not all legal notices are posted on the Secretary of State's open meeting web application.

Despite the Commission's considerable efforts to refine its procedures to ensure accuracy, transparency, and timeliness, we continue to experience publication errors. While not all errors require re-publication, even a single mistake can result in costly delays for infrastructure development and require extensive administrative work to correct. The issue is unique in that the failure of a single newspaper in the multiple counties of required publication can result in a failure to meet legal requirements, even though the mistake is subject to third-party error.

To illustrate the issue, the Commission recently issued a Notice of Filing and Notice of Hearing where we scheduled two hearings - one in Underwood on February 26, 2025, and another in Stanley on March 6, 2025. This notice was sent to the newspaper association 26 days prior to the first hearing and it was confirmed that it would be published in five official county newspapers twice (as required by law). However, after the Underwood hearing, the Commission

received notice that one newspaper failed to publish the second required notice in time, and we discovered that the subsequent Stanley hearing would also need to be canceled due to the same publication failure. As a result, both hearings must be rescheduled, delaying the decision by over a month, at a minimum. This delay comes at a considerable expense, not only in agency staff time and resources, but also to the applicant. North Dakota has a limited construction window due to our climate and frozen ground during colder seasons.

This isn't an isolated incident. Similar issues have led to missed substantial construction delays and delayed rulemaking proceedings. This has also occurred in many other proceedings, including rulemakings to implement legislation (which require publication in every county of the state). If you would like additional examples, we would be able to provide them to you.

Another concern is accessibility. Many frustrated landowners and residents have expressed that they are not local newspaper subscribers, and as a result, miss important notices about participation in Commission proceedings. Public participation is vital and required for our decision making, and it is far more difficult to address the concern after a project is permitted, constructed, and investment has been made.

Senate Bill 2069 offers a straightforward solution. If a newspaper fails to publish a required notice, posting with the Secretary of State would serve as a legal safeguard. **To be clear, we do not support eliminating newspaper publication – it remains a valuable tool for notifying the public.** However, we believe the additional option enhances transparency and accessibility.

During prior committee hearings, the newspaper association presented a survey on legal publication preferences. While the study supported continued newspaper publication, it also showed strong support for government website postings. When asked if notices should be published in newspapers AND on government websites, 85% of respondents agreed. Furthermore, some comments included:

- “I feel information that should be public should be easily accessible to all.”
- “Public notices should appear on both state websites and in newspapers.”
- “They should be available as many places as possible.”

We agree with the survey that additional transparency is better, and ideally that could be accomplished by utilizing a web app through the Secretary of State that would provide a repository of legal notices and provides searchability and subscription to notifications.

This legislation achieves three key objectives:

1. **Maintaining Current Requirements:** It preserves all existing publication mandates, ensuring continuity with current public expectations.
2. **Enhancing Public Access:** By creating a centralized repository for state legal notices and potentially offering a subscription service for updates, it provides greater transparency and public accessibility to legal proceedings.
3. **Providing a Backstop:** It mitigates risks associated with publication failures, ensuring legal processes are not jeopardized.

The publication of legal notices¹ is critical to fulfilling compliance with statutory obligations, including administrative rulemaking, permitting coal mines, constructing energy infrastructure, extending utility services, and implementing rate changes. These notices establish jurisdiction for legal and regulatory decisions. Publication failures can have significant consequences leading to rescheduled hearings, reissued notices, and legal reviews – causing significant costs and delays for stakeholders and the public.

Our staff has had to dedicate substantial resources to verifying and correcting publication errors, often extending notice periods beyond legal requirements as a precaution and already adding delays to projects. We have worked with the newspaper association for years to reduce and prevent publication errors, but they continue. This bill benefits the public, but we believe this will also ultimately provide a benefit to the individual newspapers that are already under immense pressure by limiting impacts when errors occur and ensuring our agency and the state are in control of the processes and procedures necessary to meet its legal obligations.

Senate Bill 2069 addresses these challenges by offering a practical solution that enhances transparency and public participation while reducing the risks and burdens associated with failed publications. We believe this measure represents a necessary and prudent step forward.

This concludes my testimony. Thank you for your time and attention. I am happy to answer any questions the committee may have.

¹ Notices required under North Dakota Century Code Sections 49-22-13(4), 49-22.1-10(4), 49-03-02(2), 49-03-06(4), 49-03.1-05, 28-32-10(b), etc.