

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1161

Final Reading

Introduced by Smith, 14.

Read first time January 19, 2012

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to oil pipelines; to amend section 57-1101,
2 Reissue Revised Statutes of Nebraska, as amended by
3 section 1, Legislative Bill 1, One Hundred Second
4 Legislature, First Special Session, 2011, sections 2, 3,
5 5, and 6, Legislative Bill 1, One Hundred Second
6 Legislature, First Special Session, 2011, and section 3,
7 Legislative Bill 4, One Hundred Second Legislature, First
8 Special Session, 2011; to change provisions relating to
9 eminent domain; to change provisions of the Major Oil
10 Pipeline Siting Act; to provide, change, and eliminate
11 provisions relating to the review and evaluation of oil
12 pipeline routes; to harmonize provisions; to appropriate
13 funds to aid in carrying out the provisions of
14 Legislative Bill 1161, One Hundred Second Legislature,
15 Second Session, 2012; to provide severability; to repeal
16 the original sections; and to declare an emergency.

1 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 57-1101, Reissue Revised Statutes of
2 Nebraska, as amended by section 1, Legislative Bill 1, One Hundred
3 Second Legislature, First Special Session, 2011, is amended to read:

4 57-1101 Any person engaged in, and any company,
5 corporation, or association formed or created for the purpose of,
6 transporting or conveying crude oil, petroleum, gases, or other
7 products thereof in interstate commerce through or across the State
8 of Nebraska or intrastate within the State of Nebraska, and desiring
9 or requiring a right-of-way or other interest in real estate and
10 being unable to agree with the owner or lessee of any land, lot,
11 right-of-way, or other property for the amount of compensation for
12 the use and occupancy of so much of any lot, land, real estate,
13 right-of-way, or other property as may be reasonably necessary for
14 the laying, relaying, operation, and maintenance of any such pipeline
15 or the location of any plant or equipment necessary to operate such
16 pipeline, shall have the right to acquire the same for such purpose
17 through the exercise of the power of eminent domain, except that for
18 any major oil pipeline as defined in section 5 of this act to be
19 placed in operation in the State of Nebraska after the effective date
20 of this act, any such person, company, corporation, or association
21 shall comply with section 3, Legislative Bill 4, One Hundred Second
22 Legislature, First Special Session, 2011, as amended by the One
23 Hundred Second Legislature, Second Session, 2012, and receive the
24 approval of the Governor for the route of the pipeline under such
25 section or shall apply for and receive an order approving the

1 application under the Major Oil Pipeline Siting Act, prior to having
2 the rights provided under this section. If condemnation procedures
3 have not been commenced within two years after the date the
4 Governor's approval is granted or after the date of receipt of an
5 order approving an application under the Major Oil Pipeline Siting
6 Act, the right under this section expires. The procedure to condemn
7 property shall be exercised in the manner set forth in sections
8 76-704 to 76-724.

9 Sec. 2. Section 2, Legislative Bill 1, One Hundred Second
10 Legislature, First Special Session, 2011, is amended to read:

11 Sec. 2. Sections 2 to 13 of this act and section 3 of
12 this act shall be known and may be cited as the Major Oil Pipeline
13 Siting Act.

14 Sec. 3. The commission shall not withhold any documents
15 or records relating to a major oil pipeline from the public unless
16 the documents or records are of the type that can be withheld under
17 section 84-712.05 or unless federal law provides otherwise.

18 Sec. 4. Section 3, Legislative Bill 1, One Hundred Second
19 Legislature, First Special Session, 2011, is amended to read:

20 Sec. 3. (1) The purposes of the Major Oil Pipeline Siting
21 Act are to:

22 (a) Ensure the welfare of Nebraskans, including
23 protection of property rights, aesthetic values, and economic
24 interests;

25 (b) Consider the lawful protection of Nebraska's natural

1 resources in determining the location of routes of major oil
2 pipelines within Nebraska;

3 (c) Ensure that a major oil pipeline is not constructed
4 within Nebraska without receiving the approval of the commission
5 under section 9 of this act;

6 (d) Ensure that the location of routes for major oil
7 pipelines is in compliance with Nebraska law; and

8 (e) Ensure that a coordinated and efficient method for
9 the authorization of such construction is provided.

10 (2) Nothing in the Major Oil Pipeline Siting Act shall be
11 construed to regulate any safety issue with respect to any aspect of
12 any interstate oil pipeline. The Major Oil Pipeline Siting Act is
13 intended to deal solely with the issue of siting or choosing the
14 location of the route aside and apart from safety considerations. The
15 Legislature acknowledges and respects the exclusive federal authority
16 over safety issues established by the federal law, the Pipeline
17 Safety Act of 1994, 49 U.S.C. 60101 et seq., and the express
18 preemption provision stated in that act. The Major Oil Pipeline
19 Siting Act is intended to exercise only the remaining sovereign
20 powers and purposes of Nebraska which are not included in the
21 category of safety regulation.

22 ~~(3) The Major Oil Pipeline Siting Act shall not apply to~~
23 ~~any major oil pipeline that has submitted an application to the~~
24 ~~United States Department of State pursuant to Executive Order 13337~~
25 ~~prior to the effective date of this act.~~

1 Sec. 5. Section 5, Legislative Bill 1, One Hundred Second
2 Legislature, First Special Session, 2011, is amended to read:

3 Sec. 5. For purposes of the Major Oil Pipeline Siting
4 Act:

5 (1) Commission means the Public Service Commission;

6 (2) Major oil pipeline means a pipeline which is larger
7 than six inches in inside diameter and which is constructed in
8 Nebraska for the transportation of petroleum, or petroleum
9 components, products, or wastes, including crude oil or any fraction
10 of crude oil, within, through, or across Nebraska, but does not
11 include in-field and gathering lines; ~~or major oil pipelines exempt~~
12 ~~under subsection (3) of section 3 of this act; and~~

13 (3) Pipeline carrier means a person that engages in
14 owning, operating, or managing a major oil pipeline.

15 Sec. 6. Section 6, Legislative Bill 1, One Hundred Second
16 Legislature, First Special Session, 2011, is amended to read:

17 Sec. 6. (1) ~~Unless exempt pursuant to section 3 of this~~
18 ~~act, If a~~ pipeline carrier ~~proposing~~ proposes to construct a major
19 oil pipeline to be placed in operation in Nebraska after the
20 effective date of this act and the pipeline carrier has submitted a
21 route for an oil pipeline within, through, or across Nebraska but the
22 route is not approved by the Governor pursuant to section 3,
23 Legislative Bill 4, One Hundred Second Legislature, First Special
24 Session, 2011, as amended by the One Hundred Second Legislature,
25 Second Session, 2012, the pipeline carrier shall file an application

1 with the commission and receive approval pursuant to section 9 of
2 this act prior to beginning construction of the major oil pipeline
3 within Nebraska. A—If a pipeline carrier proposing—proposes a
4 substantive change to the route of a major oil pipeline and the
5 pipeline carrier has submitted a route for an oil pipeline within,
6 through, or across Nebraska but the route is not approved by the
7 Governor pursuant to section 3, Legislative Bill 4, One Hundred
8 Second Legislature, First Special Session, 2011, as amended by the
9 One Hundred Second Legislature, Second Session, 2012, the pipeline
10 carrier shall file an application for the proposed change with the
11 commission and receive approval pursuant to section 9 of this act
12 prior to beginning construction relating to the proposed change. The
13 applicant shall also file a copy of the application with the agencies
14 listed in subsection (3) of section 8 of this act.

15 (2) The application shall be accompanied by written
16 agreement to pay expenses assessed pursuant to section 7 of this act
17 and written testimony and exhibits in support of the application. The
18 application shall include:

- 19 (a) The name and address of the pipeline carrier;
20 (b) A description of the nature and proposed route of the
21 major oil pipeline and evidence of consideration of alternative
22 routes;
23 (c) A statement of the reasons for the selection of the
24 proposed route of the major oil pipeline;
25 (d) A list of the governing bodies of the counties and

1 municipalities through which the proposed route of the major oil
2 pipeline would be located;

3 (e) A description of the product or material to be
4 transported through the major oil pipeline;

5 (f) The person who will own the major oil pipeline;

6 (g) The person who will manage the major oil pipeline;

7 (h) A plan to comply with the Oil Pipeline Reclamation
8 Act; and

9 (i) A list of planned methods to minimize or mitigate the
10 potential impacts of the major oil pipeline to land areas and
11 connected natural resources other than with respect to oil spills.

12 (3) The applicant shall publish notice of the application
13 in at least one newspaper of general circulation in each county in
14 which the major oil pipeline is to be constructed and forward a copy
15 of such notice to the commission. The applicant shall serve notice of
16 the application upon the governing bodies of the counties and
17 municipalities specified pursuant to subdivision (2)(d) of this
18 section.

19 Sec. 7. Section 3, Legislative Bill 4, One Hundred Second
20 Legislature, First Special Session, 2011, is amended to read:

21 Sec. 3. (1)(a) The department may:

22 (i) Evaluate any route for an oil pipeline within,
23 through, or across the state and submitted by a pipeline carrier for
24 the stated purpose of being included in a federal agency's or
25 agencies' National Environmental Policy Act review process. Any such

1 evaluation shall include at least one public hearing, provide
2 opportunities for public review and comment, and include, but not be
3 limited to, an analysis of the environmental, economic, social, and
4 other impacts associated with the proposed route and route
5 alternatives in Nebraska. The department may collaborate with a
6 federal agency or agencies and set forth the responsibilities and
7 schedules that will lead to an effective and timely evaluation; or

8 collaborate—(ii) Collaborate with a federal agency or
9 agencies in a review under the National Environmental Policy Act
10 involving a supplemental environmental impact statement for oil
11 pipeline projects within, through, or across the state. Prior to
12 entering into such shared jurisdiction and authority, the department
13 shall collaborate with such agencies to set forth responsibilities
14 and schedules for an effective and timely review process.

15 ~~Prior to entering into such shared jurisdiction and~~
16 ~~authority with a federal agency or agencies, the department shall~~
17 ~~enter into a memorandum of understanding with such federal agency or~~
18 ~~agencies that sets forth the responsibilities and schedules that will~~
19 ~~lead to an effective and timely review under the National~~
20 ~~Environmental Policy Act involving a supplemental environmental~~
21 ~~impact statement.~~

22 (b) A pipeline carrier that has submitted a route for
23 evaluation or review pursuant to subdivision (1)(a) of this section
24 shall reimburse the department for the cost of the evaluation or
25 review within sixty days after notification from the department of

1 the cost. The department shall remit any reimbursement to the State
2 Treasurer for credit to the Department of Environmental Quality Cash
3 Fund.

4 ~~(2) Since the objectives of the process are to ensure~~
5 ~~adequate information gathering, full and careful agency and public~~
6 ~~review, objective preparation of a supplemental environmental impact~~
7 ~~statement, adherence to a defined schedule, and an appropriate role~~
8 ~~for a pipeline carrier which avoids the appearance of conflicts of~~
9 ~~interest, it is the intent of the Legislature that the state fully~~
10 ~~fund the process of preparation of a supplemental environmental~~
11 ~~impact statement and that no fees will be required of an applicant.~~
12 The department may contract with outside vendors in the process of
13 preparation of a supplemental environmental impact statement or an
14 evaluation conducted under subdivision (1)(a) of this section. The
15 department shall make every reasonable effort to ensure that each
16 vendor has no conflict of interest or relationship to any pipeline
17 carrier that applies for an oil pipeline permit.

18 (3) In order for the process to be efficient and
19 expeditious, the department's contracts with vendors pursuant to this
20 section for a supplemental environmental impact statement or an
21 evaluation conducted under subdivision (1)(a) of this section shall
22 not be subject to the Nebraska Consultants' Competitive Negotiation
23 Act or sections 73-301 to 73-306 or 73-501 to 73-509.

24 (4) After the supplemental environmental impact statement
25 or the evaluation conducted under subdivision (1)(a) of this section

1 is prepared, the department shall submit it to the Governor. Within
2 thirty days after receipt of the supplemental environmental impact
3 statement or the evaluation conducted under subdivision (1)(a) of
4 this section from the department, the Governor shall indicate, in
5 writing, to the federal agency or agencies involved in the review or
6 any other appropriate federal agency or body as to whether he or she
7 approves any of the routes reviewed in the supplemental environmental
8 impact statement or the evaluation conducted under subdivision (1)(a)
9 of this section. If the Governor does not approve any of the reviewed
10 routes, he or she shall notify the pipeline carrier that in order to
11 obtain approval of a route in Nebraska the pipeline carrier is
12 required to file an application with the Public Service Commission
13 pursuant to the Major Oil Pipeline Siting Act.

14 (5) The department shall not withhold any documents or
15 records relating to an oil pipeline from the public unless the
16 documents or records are of the type that can be withheld under
17 section 84-712.05 or unless federal law provides otherwise.

18 Sec. 8. There is hereby appropriated (1) \$2,000,000 from
19 the Department of Environmental Quality Cash Fund for FY2012-13 and
20 (2) \$-0- from the Department of Environmental Quality Cash Fund for
21 FY2013-14 to the Department of Environmental Quality, for Program
22 513, to aid in carrying out the provisions of Legislative Bill 1161,
23 One Hundred Second Legislature, Second Session, 2012.

24 Sec. 9. If any section in this act or any part of any
25 section is declared invalid or unconstitutional, the declaration

1 shall not affect the validity or constitutionality of the remaining
2 portions.

3 Sec. 10. Original section 57-1101, Reissue Revised
4 Statutes of Nebraska, as amended by section 1, Legislative Bill 1,
5 One Hundred Second Legislature, First Special Session, 2011, sections
6 2, 3, 5, and 6, Legislative Bill 1, One Hundred Second Legislature,
7 First Special Session, 2011, and section 3, Legislative Bill 4, One
8 Hundred Second Legislature, First Special Session, 2011, are
9 repealed.

10 Sec. 11. Since an emergency exists, this act takes effect
11 when passed and approved according to law.