

AMENDMENTS TO LB 4

Introduced by Natural Resources

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Sections 1 to 11 of this act shall be known  
4 and may be cited as the Oil Pipeline Route Certification Act.

5           Sec. 2. The Legislature finds that:

6           (1) The governmental authority known as the police  
7 power is inherently an attribute of state sovereignty and may  
8 be conferred by the state either through its constitution or by  
9 legislation;

10          (2) The State of Nebraska is responsible for protecting  
11 its natural resources, agricultural resources, aesthetics, and the  
12 state's economy and communities through reasonable regulation for  
13 the common good and welfare. As such, the state is responsible  
14 for ensuring that an oil pipeline proposed to be located within,  
15 through, or across Nebraska is in compliance with all state laws,  
16 rules, and regulations relating to water, air, and wildlife under  
17 the Constitution of Nebraska and state law;

18          (3) Public policy should reflect this responsibility  
19 while simultaneously recognizing the necessity for energy use and  
20 economic benefits to Nebraska of transporting oil within, through,  
21 or across the state, the need for economic development in Nebraska,  
22 and the opportunities that new development brings to the state for  
23 jobs and revenue;

1           (4) The State of Nebraska has a compelling interest in  
2 protecting the general welfare of its communities and rural areas;

3           (5) The water and other natural resources in Nebraska  
4 will become increasingly valuable, both economically and  
5 strategically, as the demand for agricultural products for both  
6 food and fuel increases;

7           (6) The State of Nebraska has a compelling interest in  
8 protecting and maintaining its agricultural economy. Irrigation  
9 is a vital component of the productive agricultural economy of  
10 Nebraska, as it adds over one billion dollars annually to net  
11 farm income and increases the gross state product by three billion  
12 dollars annually. According to a 2007 Census of Agriculture report,  
13 Nebraska ranks first nationally with about 8.5 million irrigated  
14 acres;

15           (7) Under the Nebraska Ground Water Management and  
16 Protection Act, the ownership of water is held by the State  
17 of Nebraska for the benefit of its residents. Ground water is  
18 one of the most valuable natural resources in the state and is  
19 essential to the agricultural economy in Nebraska, now and in the  
20 future;

21           (8) Article XV, section 4, of the Constitution of  
22 Nebraska states that the necessity of water for domestic use  
23 and for irrigation purposes in the State of Nebraska is a natural  
24 want. The statutory law and judicial decisions of the Nebraska  
25 Supreme Court show a clear intention to enforce and maintain a  
26 rigid economy in the use of public water to secure the greatest  
27 benefit possible from the water available for irrigation. The state

1 has the right, under both the police powers and the Constitution of  
2 Nebraska, to regulate the use of natural rivers and streams so that  
3 waste is eliminated, In re Water Appropriation Nos. 442A, 461, 462,  
4 and 485, 210 Neb. 161, 313 N.W.2d 271 (1981);

5 (9) The State of Nebraska has a compelling interest in  
6 protecting its resources and environment for economic, aesthetic,  
7 recreational, and other purposes;

8 (10) The Governor is required to review programs he or  
9 she administers and state agencies are required to utilize their  
10 authorities in section 37-807 in furtherance of the purposes of the  
11 Nongame and Endangered Species Conservation Act and to take action  
12 necessary to insure that actions authorized, funded, or carried  
13 out by the state do not jeopardize the continued existence of such  
14 endangered or threatened wildlife or wild plants or result in the  
15 destruction or modification of critical habitat;

16 (11) Article IV, section 1, of the Constitution of  
17 Nebraska authorizes the Legislature to delegate to the Governor the  
18 duty to administer certain statutes and programs;

19 (12) The Legislature is exclusively authorized to  
20 delegate the power of eminent domain and restrict or limit the  
21 extent of its use, Burnett v. Central Nebraska Public Power and  
22 Irrigation District, 147 Neb. 458, 23 N.W.2d 661 (1946); and

23 (13) Article IV, section 6, of the Constitution of  
24 Nebraska clearly states that the supreme executive power shall be  
25 vested in the Governor, who is to take care that the laws be  
26 faithfully executed and the affairs of the state efficiently and  
27 economically administered.

1           Sec. 3. The purpose of the Oil Pipeline Route  
2 Certification Act is to provide a coordinated and efficient  
3 certification procedure for the state, acting through the  
4 Governor, to ensure the preservation and protection of Nebraska's  
5 interests in the general welfare, economy, agricultural resources,  
6 communities, recreational resources, environment, wildlife, and all  
7 natural resources whenever an oil pipeline is proposed to be placed  
8 within, through, or across Nebraska.

9           Sec. 4. For purposes of the Oil Pipeline Route  
10 Certification Act:

11           (1) Department means the Department of Environmental  
12 Quality;

13           (2) Oil pipeline means a pipeline constructed or operated  
14 in Nebraska for the transportation of petroleum, or petroleum  
15 components, products, or wastes, including crude oil or any  
16 fraction of crude oil, within, through, or across Nebraska, but  
17 does not include in-field flowlines and gathering lines;

18           (3) Panel means the panel established to advise the  
19 Governor pursuant to section 7 of this act;

20           (4) Pipeline carrier means an individual, a company, a  
21 corporation, an association, or any other legal entity that engages  
22 in owning, operating, or managing an oil pipeline; and

23           (5) Route certificate means an Oil Pipeline Route  
24 Certificate issued under the Oil Pipeline Route Certification Act.

25           Sec. 5. A pipeline carrier shall not construct an oil  
26 pipeline within, through, or across Nebraska prior to obtaining a  
27 route certificate.

1           Sec. 6. (1) Any pipeline carrier that intends to  
2 construct an oil pipeline within, through, or across Nebraska  
3 shall apply to the department for a route certificate prior to  
4 beginning construction. The department shall notify the Governor  
5 upon receipt of an application.

6           (2) The application shall be accompanied by a written  
7 agreement to pay reasonable expenses assessed pursuant to section  
8 11 of this act. The application shall include:

9           (a) The name and address of the applicant and pipeline  
10 carrier, owner, and manager, if different;

11           (b) A detailed description of the proposed route,  
12 including maps and materials the pipeline is proposed to carry;

13           (c) A statement describing the reasons for the selection  
14 of the route and any alternative routes considered;

15           (d) A statement explaining why an existing corridor was  
16 not selected as the route;

17           (e) The details of an emergency response plan;

18           (f) An explanation of any precautions that will be  
19 taken in any part of the state related to the protection  
20 of natural resources, the economy, agricultural resources, and  
21 communities or mitigation of the reasonably foreseeable impacts  
22 of the construction and operation of the proposed pipeline and  
23 reclamation plan; and

24           (g) Any other materials the department may require in any  
25 rules and regulations it may adopt.

26           As part of the application, the applicant shall submit  
27 any material, reports, or studies submitted by or issued to the

1 applicant as part of any federal or state permit process.

2 (3) Within thirty days after receipt of an application,  
3 the department shall provide notice and hold a public meeting  
4 regarding the route of the oil pipeline. The purposes of holding  
5 such a public meeting shall be to inform the public of the route of  
6 the oil pipeline, to solicit public input and opinion, to provide  
7 for the applicant to describe the project to the panel and the  
8 public, and to provide for the panel to receive evidence regarding  
9 the merits of the application. The department shall set a date and  
10 time for the public meeting to be held at a location or locations  
11 convenient to the route of the oil pipeline and shall publish a  
12 notice of such meeting in a legal newspaper published in or of  
13 general circulation in each county in which the route of the oil  
14 pipeline is to be located. The notice shall be published at least  
15 ten days prior to the meeting and shall set forth the purpose,  
16 date, time, and place of the meeting.

17 Sec. 7. Within five business days after the effective  
18 date of this act, the Governor shall appoint the initial members  
19 to the panel as provided in this section to advise the Governor  
20 regarding the issuance of a route certificate to an applicant. The  
21 Lieutenant Governor shall serve as the chairperson of the panel.  
22 The members of the panel shall be the Director of Environmental  
23 Quality or his or her designee; the Director of Natural Resources  
24 or his or her designee; the secretary of the Game and Parks  
25 Commission or his or her designee; the executive director of the  
26 Public Service Commission or his or her designee; the Director of  
27 the Nebraska Oil and Gas Conservation Commission or his or her

1 designee; one member of a county board from each congressional  
2 district appointed by the Governor; and one resident landowner  
3 from each congressional district appointed by the Governor. The  
4 appointed members shall be appointed for staggered three-year  
5 terms. At the expiration of the term of an appointed member, the  
6 Governor shall appoint a successor or reappoint such member. The  
7 panel may meet as often as it deems necessary.

8           Sec. 8. (1) The department may, but is not required to,  
9 adopt and promulgate rules and regulations as necessary to carry  
10 out the Oil Pipeline Route Certification Act. The department shall  
11 provide all necessary administrative support for the work of the  
12 panel.

13           (2) Not later than sixty days after the department  
14 receives an application under section 6 of this act, the panel  
15 shall submit a written recommendation to the Governor regarding the  
16 application. The panel shall use all information submitted with the  
17 application and may consult with any person with knowledge of the  
18 subject matter that the panel determines may be of assistance in  
19 evaluating the application. The panel shall consider the following  
20 criteria in making its recommendation:

21           (a) Whether the route of the oil pipeline interferes  
22 with the state's responsibility to protect the environment and  
23 natural resources and regulate land use and water as prescribed by  
24 state law or would have significant adverse impacts on the state's  
25 general welfare, economy, agricultural resources and practices,  
26 aesthetics, or communities;

27           (b) Whether the applicant and the route comply with the

1 Nebraska Ground Water Management and Protection Act;

2 (c) Whether the applicant and the route are likely to  
3 violate the Nongame and Endangered Species Conservation Act;

4 (d) Whether the application includes a written mitigation  
5 plan containing measures the applicant will take to reduce or  
6 avoid potentially significant adverse impacts on the environment  
7 and ecology of the land, waters, and wildlife of the state;

8 (e) Whether any such mitigation plan would address  
9 any significant adverse effects on the state's general welfare,  
10 economy, agricultural resources, and communities;

11 (f) Whether any other oil pipeline corridor exists that  
12 could feasibly and beneficially be used for the applicant's project  
13 and whether the applicant has adequately studied and rejected the  
14 use of such corridor, if any;

15 (g) Whether the route would impact the orderly  
16 development of the surrounding area; and

17 (h) Whether public comment has been heard and considered  
18 regarding the route pursuant to section 6 of this act.

19 (3) If the panel finds that the applicant has  
20 affirmatively met each of the criteria in subsection (2) of this  
21 section, the panel shall prepare a report of its findings and  
22 present such report to the Governor, along with its recommendation  
23 that the route certificate be issued to the applicant. If the  
24 panel finds that the applicant has not met each criteria in  
25 subsection (2) of this section, the panel shall prepare a report  
26 that describes the deficiencies of the application and present such  
27 report to the Governor, along with its recommendation that the



1 route certificate be denied.

2           Sec. 9. (1) Within thirty days after receiving a written  
3 recommendation from the panel, the Governor shall either approve  
4 or deny an application submitted under the Oil Pipeline Route  
5 Certification Act. Upon the Governor's approval, the department  
6 shall prepare and issue a route certificate to the applicant. Upon  
7 denial, the department shall prepare and issue an order stating the  
8 same to the applicant.

9           (2) If the Governor denies the application, the applicant  
10 may amend the denied application in accordance with the findings of  
11 the panel and submit the amended application for consideration  
12 within sixty days after issuance of the order denying the  
13 certificate. Within thirty days after receipt of the amended  
14 application, the panel shall proceed in accordance with section 8  
15 of this act.

16           (3) The Governor's action on the application shall be  
17 final. The applicant may appeal the Governor's final order, and  
18 the appeal shall be in accordance with the Administrative Procedure  
19 Act.

20           Sec. 10. The Oil Pipeline Route Certification Fund is  
21 created. The fund shall be administered by the department. The fund  
22 shall be used by the department to carry out the Oil Pipeline Route  
23 Certification Act. Any money in the fund available for investment  
24 shall be invested by the state investment officer pursuant to  
25 the Nebraska Capital Expansion Act and the Nebraska State Funds  
26 Investment Act.

27           Sec. 11. (1) The department shall assess expenses

1 reasonably attributable to investigation and the public meeting  
2 required by section 6 of this act regarding an application filed  
3 under the Oil Pipeline Route Certification Act, including both  
4 direct and indirect expenses incurred by the department or its  
5 staff, to the applicant as agreed under the act.

6 (2) The department shall ascertain the expenses of any  
7 such investigation and public meeting and by order assess such  
8 expenses against the applicant and shall render a bill therefor,  
9 by United States mail, to the applicant, either at the time of the  
10 panel's recommendation to the Governor or from time to time during  
11 such application process. Such bill shall constitute notice of such  
12 assessment and demand of payment thereof. Upon a bill rendered  
13 to such applicant, within fifteen days after the mailing thereof,  
14 such applicant shall pay to the department the amount of the  
15 assessment for which it is billed. The department shall remit the  
16 payment to the State Treasurer for credit to the Oil Pipeline Route  
17 Certification Fund for the use of the department. The department  
18 may render bills in one fiscal year for costs incurred within a  
19 previous fiscal year.

20 (3) If any applicant against which an assessment has been  
21 made pursuant to this section, within fifteen days after the notice  
22 of such assessment, (a) neglects or refuses to pay the same or (b)  
23 fails to file objections to the assessment with the department as  
24 provided in subsection (4) of this section, the department shall  
25 transmit to the State Treasurer a certified copy of the notice  
26 of assessment, together with notice of neglect or refusal to pay  
27 the assessment, and on the same day the department shall mail by

1 registered mail to the applicant against which the assessment has  
2 been made a copy of the notice which it has transmitted to the  
3 State Treasurer. If any such applicant fails to pay such assessment  
4 to the State Treasurer within ten days after receipt of such notice  
5 and certified copy of such assessment, the assessment shall bear  
6 interest at the rate of fifteen percent per annum from and after  
7 the date on which the copy of the notice was mailed by registered  
8 mail to such applicant.

9 (4) Within fifteen days after the date of the mailing  
10 of any notice of assessment under subsection (2) of this section,  
11 the applicant against which such assessment has been made may  
12 file with the department objections setting out in detail the  
13 grounds upon which the applicant regards such assessment to be  
14 excessive, erroneous, unlawful, or invalid. The department shall  
15 determine if the assessment or any part of the assessment is  
16 excessive, erroneous, unlawful, or invalid and shall render an  
17 order upholding, invalidating, or amending the assessment. An  
18 amended assessment shall have in all respects the same force and  
19 effect as though it were an original assessment.

20 (5) If any assessment against which objections have been  
21 filed is not paid within ten days after service of an order finding  
22 that such objections have been overruled and disallowed by the  
23 department, the department shall give notice of such delinquency to  
24 the State Treasurer and to the applicant in the manner provided for  
25 in subsection (3) of this section. The State Treasurer shall then  
26 collect the amount of such assessment. If an amended assessment  
27 is not paid within ten days after service of the order of the

1 department, the department shall notify the State Treasurer and  
2 the applicant as in the case of delinquency in the payment of an  
3 original assessment. The State Treasurer shall then collect the  
4 amount of such assessment as provided in the case of an original  
5 assessment.

6           Sec. 12. Section 57-1101, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           57-1101 Any person engaged in~~7~~ and any company,  
9 corporation, or association formed or created for the purpose of  
10 transporting or conveying crude oil, petroleum, gases, or other  
11 products thereof in interstate commerce through~~7~~ or across the  
12 State of Nebraska~~7~~ or intrastate within the State of Nebraska, and  
13 desiring or requiring a right-of-way or other interest in real  
14 estate~~7~~ and being unable to agree with the owner or lessee of  
15 any land, lot, right-of-way~~7~~ or other property for the amount of  
16 compensation for the use and occupancy of so much of any lot, land,  
17 real estate, right-of-way~~7~~ or other property as may be reasonably  
18 necessary for the laying, relaying, operation~~7~~ and maintenance  
19 of any such pipeline or the location of any plant or equipment  
20 necessary to operate such pipeline, shall have the right to acquire  
21 the same for such purpose through the exercise of the power of  
22 eminent domain, except that no individual, company, corporation,  
23 association, or other legal entity may condemn property after  
24 the effective date of this act for an oil pipeline as defined  
25 in section 4 of this act unless (1) it has been issued a route  
26 certificate under the Oil Pipeline Route Certification Act and (2)  
27 it has been granted any other Nebraska permit or any federal permit

1 required for such pipeline. The procedure to condemn property shall  
2 be exercised in the manner set forth in sections 76-704 to 76-724.

3           Sec. 13. The Governor under his or her general power is  
4 authorized to take all actions and carry out all duties that may  
5 be assigned to the Governor by the Oil Pipeline Route Certification  
6 Act.

7           Sec. 14. If any section in this act or any part of any  
8 section is declared invalid or unconstitutional, the declaration  
9 shall not affect the validity or constitutionality of the remaining  
10 portions.

11           Sec. 15. Original section 57-1107, Reissue Revised  
12 Statutes of Nebraska, is repealed.

13           Sec. 16. Since an emergency exists, this act takes effect  
14 when passed and approved according to law.