

AMENDMENTS TO LB 1161

Introduced by Smith

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

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

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

1 company, corporation, or association shall apply for and receive
2 an order approving the application under the Major Oil Pipeline
3 Siting Act or submit a letter of intent to file an application
4 or file an application and receive the approval of the Governor
5 for the route of the pipeline under the act prior to having the
6 rights provided under this section. If condemnation procedures have
7 not been commenced within two years after the date of receipt
8 of an order approving an application under the act or the date
9 the Governor's approval is granted under the act, the right under
10 this section expires. The procedure to condemn property shall be
11 exercised in the manner set forth in sections 76-704 to 76-724.

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

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

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

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

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

25 (a) Ensure the welfare of Nebraskans, including
26 protection of property rights, aesthetic values, and economic
27 interests;

1 (b) Consider the lawful protection of Nebraska's natural
2 resources in determining the location of routes of major oil
3 pipelines within Nebraska;

4 (c) Ensure that a major oil pipeline is not constructed
5 within Nebraska without receiving ~~the approval of the commission~~
6 under section 8 of this act or section 9 of this act;

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

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

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

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

27 Sec. 5. Section 5, Legislative Bill 1, One Hundred Second

1 Legislature, First Special Session, 2011, is amended to read:

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

4 (1) Commission means the Public Service Commission;

5 (2) Department means the Department of Environmental
6 Quality;

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

14 ~~(3) (4) Pipeline carrier means a person that engages in~~
15 owning, operating, or managing a major oil pipeline.

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

18 Sec. 6. (1) ~~Unless exempt pursuant to section 3 of this~~
19 ~~act, a~~ A pipeline carrier proposing to construct a major oil
20 pipeline to be placed in operation in Nebraska after the effective
21 date of this act shall file an application with the commission
22 or a letter of intent to file an application and receive approval
23 pursuant to section 8 of this act or section 9 of this act prior to
24 beginning construction of the major oil pipeline within Nebraska.
25 A pipeline carrier proposing a substantive change to the route of
26 a major oil pipeline shall file an application or a letter of
27 intent to file an application for the proposed change with the

1 commission and receive approval pursuant to section 8 of this act
2 or section 9 of this act prior to beginning construction relating
3 to the proposed change. The applicant shall also file a copy of
4 the application with the agencies listed in subsection ~~(3)~~ (5) of
5 section 8 of this act.

6 (2) The application or letter of intent shall be
7 accompanied by written agreement to pay expenses assessed pursuant
8 to section 7 of this act. The application shall include and
9 written testimony and exhibits in support of the application. The
10 application or letter of intent shall include:

11 (a) The name and address of the pipeline carrier;

12 (b) A description of the nature and proposed route of
13 the major oil pipeline and evidence of consideration of alternative
14 routes;

15 (c) A statement of the reasons for the selection of the
16 proposed route of the major oil pipeline;

17 (d) A list of the governing bodies of the counties and
18 municipalities through which the proposed route of the major oil
19 pipeline would be located;

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

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

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

24 (h) A plan to comply with the Oil Pipeline Reclamation
25 Act; and

26 (i) A list of planned methods to minimize or mitigate
27 the potential impacts of the major oil pipeline to land areas and

1 connected natural resources other than with respect to oil spills.

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

9 Sec. 7. Section 7, Legislative Bill 1, One Hundred Second
10 Legislature, First Special Session, 2011, is amended to read:

11 Sec. 7. (1) The commission or department shall assess the
12 expenses reasonably attributable to evaluation, investigation, and
13 hearing regarding an application or a letter of intent to file an
14 application filed under section 6 of this act, including expenses
15 billed by agencies filing reports as required in subsection ~~(3)~~
16 (5) of section 8 of this act and both direct and indirect expenses
17 incurred by the commission, the department, or ~~its~~ staff or
18 consultants of the commission or department, to the applicant as
19 agreed under section 6 of this act.

20 (2) The commission or department shall ascertain the
21 expenses of any such evaluation, investigation, and hearing and by
22 order assess such expenses against the applicant and shall render
23 a bill therefor, by United States mail, to the applicant, either
24 at the time the approval under section 8 of this act or the
25 order under section 9 of this act is issued or from time to time
26 during such application process. Such bill shall constitute notice
27 of such assessment and demand of payment thereof. Upon a bill

1 rendered to such applicant, within fifteen days after the mailing
2 thereof, such applicant shall pay to the commission or department
3 the amount of the assessment for which it is billed. The commission
4 shall remit the payment to the State Treasurer for credit to the
5 Public Service Commission Pipeline Regulation Fund. The department
6 shall remit the payment to the State Treasurer for credit to the
7 Department of Environmental Quality Cash Fund. The commission or
8 department may render bills in one fiscal year for costs incurred
9 within a previous fiscal year. The commission shall direct the
10 State Treasurer to credit any reimbursement of expenses billed by
11 agencies pursuant to subsection ~~(3)~~ (5) of section 8 of this act to
12 the appropriate fund of the appropriate agency.

13 (3) If any applicant against which an assessment has been
14 made pursuant to this section, within fifteen days after the notice
15 of such assessment, (a) neglects or refuses to pay the same or
16 (b) fails to file objections to the assessment with the commission
17 or department as provided in subsection (4) of this section, the
18 commission or department shall transmit to the State Treasurer a
19 certified copy of the notice of assessment, together with notice
20 of neglect or refusal to pay the assessment, and on the same day
21 the commission or department shall mail by registered mail to the
22 applicant against which the assessment has been made a copy of
23 the notice which it has transmitted to the State Treasurer. If any
24 such applicant fails to pay such assessment to the State Treasurer
25 within ten days after receipt of such notice and certified copy of
26 such assessment, the assessment shall bear interest at the rate of
27 fifteen percent per annum from and after the date on which the copy

1 of the notice was mailed by registered mail to such applicant.

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

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

27 Sec. 8. Section 8, Legislative Bill 1, One Hundred Second

1 Legislature, First Special Session, 2011, is amended to read:

2 Sec. 8. (1) After receipt of an application under section
3 6 of this act or receipt of a letter of intent to file an
4 application, the Governor may review the application or letter
5 of intent. If the Governor reviews the application or letter of
6 intent, such review shall be completed within thirty days after
7 receipt of the application or letter of intent. If the Governor
8 finds that the conditions listed in this subsection exist, the
9 application or letter of intent shall be evaluated under subsection
10 (2) of this section and the application or letter of intent shall
11 no longer be considered before the commission. If the Governor does
12 not find such conditions exist or does not review the application
13 or letter of intent, the applicant shall file an application with
14 the commission if the applicant had filed a letter of intent and
15 the application shall be subject to subsection (3) of this section.

16 The conditions are:

17 (a) The Governor issues an executive order declaring
18 that a full and expedited evaluation of the route of a major
19 oil pipeline is in the best interest of Nebraska to protect its
20 natural resources, agricultural resources, aesthetics, economy, and
21 communities through reasonable regulations for the common good and
22 welfare;

23 (b) The major oil pipeline would traverse two or more
24 states, including Nebraska; and

25 (c) The pipeline carrier has submitted an application
26 pursuant to a presidential executive order or other federal law
27 governing international pipelines.

1 (2) The department shall evaluate any route for a
2 major oil pipeline subject to this subsection within, through,
3 or across the state and submitted by a pipeline carrier for
4 the stated purpose of being included in a federal agency's or
5 agencies' National Environmental Policy Act review process. Any
6 such evaluation shall provide opportunities for public review and
7 comment and shall include, but not be limited to, an analysis of
8 the environmental, economic, social, and other impacts associated
9 with the proposed route and route alternatives in Nebraska. The
10 department may collaborate with a federal agency or agencies and
11 set forth the responsibilities and schedules that will lead to
12 an effective and timely evaluation. In order for the evaluation
13 process to be efficient and expeditious, the department's contracts
14 for professional services and expert assistance pursuant to the
15 authority in section 10 of this act shall not be subject to
16 the Nebraska Consultants' Competitive Negotiation Act or sections
17 73-301 to 73-306 or 73-501 to 73-509. After the department's
18 evaluation is prepared, the department shall submit it to the
19 Governor. Within thirty days after receipt of the evaluation from
20 the department, the Governor shall indicate, in writing, to the
21 federal agency or agencies involved in the review as to whether he
22 or she approves any of the routes reviewed in the evaluation.

23 (3) For an application subject to this subsection, the
24 commission shall:

25 (a) Within sixty days after the Governor's finding under
26 subsection (1) of this section, after the Governor decides not
27 to review the application, or after the Governor decides not to

1 review the letter of intent and the subsequent submission of an
2 application, schedule a public hearing;

3 (b) Notify the pipeline carrier of the time, place, and
4 purpose of the public hearing;

5 (c) Publish a notice of the time, place, and purpose
6 of the public hearing in at least one newspaper of general
7 circulation in each county in which the major oil pipeline is to be
8 constructed; and

9 (d) Serve notice of the public hearing upon the governing
10 bodies of the counties and municipalities through which the
11 proposed route of the major oil pipeline would be located as
12 specified in subdivision (2)(d) of section 6 of this act.

13 ~~(2)~~ (4) The commission may hold additional public
14 meetings for the purpose of receiving input from the public at
15 locations as close as practicable to the proposed route of the
16 major oil pipeline. The commission shall make the public input part
17 of the record.

18 ~~(3)~~ (5) If requested by the commission, the following
19 agencies shall file a report with the commission, prior to the
20 hearing on the application, regarding information within the
21 respective agencies' area of expertise relating to the impact
22 of the major oil pipeline on any area within the respective
23 agencies' jurisdiction, including in such report opinions regarding
24 the advisability of approving, denying, or modifying the location
25 of the proposed route of the major oil pipeline: The Department
26 of Environmental Quality, the Department of Natural Resources, the
27 Department of Revenue, the Department of Roads, the Game and Parks

1 Commission, the Nebraska Oil and Gas Conservation Commission, the
2 Nebraska State Historical Society, the State Fire Marshal, and
3 the Board of Educational Lands and Funds. The agencies may submit
4 a request for reimbursement of reasonable and necessary expenses
5 incurred for any consultants hired pursuant to this subsection.

6 ~~(4)~~ (6) An application ~~under the Major Oil Pipeline~~
7 ~~Siting Act~~ subject to subsection (3) of this section shall be
8 approved if the proposed route of the major oil pipeline is
9 determined by the Public Service Commission to be in the public
10 interest. The pipeline carrier shall have the burden to establish
11 that the proposed route of the major oil pipeline would serve
12 the public interest. In determining whether the pipeline carrier
13 has met its burden, the commission shall not evaluate safety
14 considerations, including the risk or impact of spills or leaks
15 from the major oil pipeline, but the commission shall evaluate:

16 (a) Whether the pipeline carrier has demonstrated
17 compliance with all applicable state statutes, rules, and
18 regulations and local ordinances;

19 (b) Evidence of the impact due to intrusion upon natural
20 resources and not due to safety of the proposed route of the
21 major oil pipeline to the natural resources of Nebraska, including
22 evidence regarding the irreversible and irretrievable commitments
23 of land areas and connected natural resources and the depletion of
24 beneficial uses of the natural resources;

25 (c) Evidence of methods to minimize or mitigate the
26 potential impacts of the major oil pipeline to natural resources;

27 (d) Evidence regarding the economic and social impacts of

1 the major oil pipeline;

2 (e) Whether any other utility corridor exists that could
3 feasibly and beneficially be used for the route of the major oil
4 pipeline;

5 (f) The impact of the major oil pipeline on the orderly
6 development of the area around the proposed route of the major oil
7 pipeline;

8 (g) The reports of the agencies filed pursuant to
9 subsection ~~(3)~~ (5) of this section; and

10 (h) The views of the governing bodies of the counties and
11 municipalities in the area around the proposed route of the major
12 oil pipeline.

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

15 Sec. 9. (1) Within seven months after the receipt of ~~the~~
16 an application under section 6 of this act which is subject to
17 subsection (3) of section 8 of this act, the commission shall enter
18 an order approving the application or denying the application.
19 The commission shall include in the order the findings of the
20 commission regarding the application and the reasons for approving
21 or denying the application. The order approving the application
22 shall state that the application is in the public interest and
23 shall authorize the pipeline carrier to act under section 57-1101.

24 (2) The commission may, for just cause, extend the time
25 for the entry of an order under subsection (1) of this section.
26 The extension shall not exceed twelve months after the receipt of
27 the application under section 6 of this act unless all parties

1 agree to a longer extension, except that no extension shall extend
2 more than eight months after the issuance of a presidential permit
3 authorizing the construction of the major oil pipeline.

4 (3) If the commission approves the application, the
5 pipeline carrier shall file a status report with the commission
6 regarding the construction of the major oil pipeline every six
7 months until the completion of the major oil pipeline within
8 Nebraska. The pipeline carrier shall notify the commission of the
9 completion of the major oil pipeline within Nebraska within thirty
10 days after such completion.

11 (4) If the commission denies the application, the
12 pipeline carrier may amend the denied application in accordance
13 with the findings of the commission and submit the amended
14 application within sixty days after the issuance of the order
15 denying the application. Within sixty days after the receipt of the
16 amended application, the commission shall enter an order approving
17 or denying the amended application after making new findings under
18 subsection ~~(4)~~ (6) of section 8 of this act.

19 Sec. 10. Section 13, Legislative Bill 1, One Hundred
20 Second Legislature, First Special Session, 2011, is amended to
21 read:

22 Sec. 13. The commission and the department may contract
23 for professional services and expert assistance, including, but
24 not limited to, the services of engineers, hydrogeologists,
25 accountants, attorneys, and economists, to assist with evaluating
26 and reviewing applications and letters of intent to file an
27 application under the Major Oil Pipeline Siting Act.

1 Sec. 11. Section 73-307, Reissue Revised Statutes of
2 Nebraska, as amended by section 4, Legislative Bill 4, One Hundred
3 Second Legislature, First Special Session, 2011, is amended to
4 read:

5 73-307 Sections 73-301 to 73-306 shall not apply to the
6 Nebraska Consultants' Competitive Negotiation Act or subsection (2)
7 of section 8 of this act. ~~or section 3 of this act.~~

8 Sections 73-301 to 73-306 shall not be construed to
9 apply to renewals of contracts already approved pursuant to or
10 not subject to such sections, to amendments to such contracts,
11 or to renewals of such amendments unless the amendments would
12 directly cause or result in the replacement by the private entity
13 of additional permanent state employees or positions greater than
14 the replacement caused by the original contract.

15 Sec. 12. Section 73-507, Reissue Revised Statutes of
16 Nebraska, as amended by section 5, Legislative Bill 4, One Hundred
17 Second Legislature, First Special Session, 2011, is amended to
18 read:

19 73-507 (1) Subject to review by the Director of
20 Administrative Services, the materiel division shall provide
21 procedures to grant limited exceptions from the provisions of
22 sections 73-504, 73-508, and 73-509 for:

- 23 (a) Sole source and emergency contracts; and
24 (b) Other circumstances or specific contracts when any
25 of the requirements of sections 73-504, 73-508, and 73-509 are not
26 appropriate for or are not compatible with the circumstances or
27 contract. The materiel division shall provide a written rationale

1 which shall be kept on file when granting an exception under this
2 subdivision.

3 (2) The following types of contracts for services are not
4 subject to sections 73-504, 73-508, and 73-509:

5 (a) Contracts for services subject to the Nebraska
6 Consultants' Competitive Negotiation Act;

7 (b) Contracts for services subject to federal law,
8 regulation, or policy or state statute, under which a state
9 agency is required to use a different selection process or to
10 contract with an identified contractor or type of contractor;

11 (c) Contracts for professional legal services and
12 services of expert witnesses, hearing officers, or administrative
13 law judges retained by state agencies for administrative or court
14 proceedings;

15 (d) Contracts involving state or federal financial
16 assistance passed through by a state agency to a political
17 subdivision;

18 (e) Contracts with direct providers of medical,
19 behavioral, or developmental health services, child care, or child
20 welfare services to an individual;

21 (f) Agreements for services to be performed for a state
22 agency by another state or local government agency or contracts
23 made by a state agency with a local government agency for the
24 direct provision of services to the public;

25 (g) Agreements for services between a state agency and
26 the University of Nebraska, the Nebraska state colleges, the
27 courts, the Legislature, or other officers or agencies established

1 by the Constitution of Nebraska;

2 (h) Department of Insurance contracts for financial
3 or actuarial examination, for rehabilitation, conservation,
4 reorganization, or liquidation of licensees, and for professional
5 services related to residual pools or excess funds under the
6 agency's control;

7 (i) Department of Roads contracts for all road and bridge
8 projects;

9 (j) Nebraska Investment Council contracts; and

10 (k) Contracts under ~~section 3 of this act~~, subsection (2)
11 of section 8 of this act.

12 Sec. 13. Section 75-502, Reissue Revised Statutes of
13 Nebraska, as amended by section 20, Legislative Bill 1, One Hundred
14 Second Legislature, First Special Session, 2011, is amended to
15 read:

16 75-502 Pipeline carriers which are declared common
17 carriers under section 75-501, and pipeline carriers approved
18 under the Major Oil Pipeline Siting Act, and pipeline carriers
19 for which the Governor approves a route under section 3 of
20 Legislative Bill 4, One Hundred Second Legislature, First Special
21 Session, 2011, may store, transport, or convey any liquid or gas,
22 or the products thereof, and make reasonable charges therefor,
23 may lay down, construct, maintain, and operate pipelines, tanks,
24 pump stations, connections, fixtures, storage plants, and such
25 machinery, apparatus, devices, and arrangement as may be necessary
26 to operate such pipes or pipelines between different points in this
27 state, and may use and occupy such lands, rights-of-way, easements,

1 franchises, buildings, and structures as may be necessary to
2 construct and maintain them.

3 Sec. 14. Section 81-1701, Reissue Revised Statutes of
4 Nebraska, as amended by section 6, Legislative Bill 4, One Hundred
5 Second Legislature, First Special Session, 2011, is amended to
6 read:

7 81-1701 The purpose of the Nebraska Consultants'
8 Competitive Negotiation Act is to provide managerial control
9 over competitive negotiations by the state for acquisition of
10 professional architectural, engineering, landscape architecture, or
11 land surveying services. The act does not apply to contracts under
12 ~~section 3 of this act.~~ subsection (2) of section 8 of this act.

13 Sec. 15. Original section 57-1101, Reissue Revised
14 Statutes of Nebraska, as amended by section 1, Legislative Bill
15 1, One Hundred Second Legislature, First Special Session, 2011,
16 sections 73-307, 73-507, and 81-1701, Reissue Revised Statutes
17 of Nebraska, as amended by sections 4, 5, and 6, respectively,
18 Legislative Bill 4, One Hundred Second Legislature, First Special
19 Session, 2011, section 75-502, Reissue Revised Statutes of
20 Nebraska, as amended by section 20, Legislative Bill 1, One Hundred
21 Second Legislature, First Special Session, 2011, and sections 2,
22 3, 5, 6, 7, 8, 9, and 13, Legislative Bill 1, One Hundred Second
23 Legislature, First Special Session, 2011, are repealed.

24 Sec. 16. The following sections are outright repealed:
25 Sections 1, 2, and 3, Legislative Bill 4, One Hundred Second
26 Legislature, First Special Session, 2011.

27 Sec. 17. Since an emergency exists, this act takes effect

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1 when passed and approved according to law.