

ONE HUNDRED SECOND LEGISLATURE - FIRST SPECIAL SESSION - 2011
COMMITTEE STATEMENT
LB4

Hearing Date: Tuesday November 08, 2011
Committee On: Natural Resources
Introducer: Langemeier
One Liner: Adopt the Oil Pipeline Route Certification Act, change eminent domain provisions for oil pipelines, and provide powers and duties for the Governor

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Carlson, Christensen, Dubas, Haar, Langemeier, McCoy, Schilz
Nay:	1	Senator Smith
Absent:		
Present Not Voting:		

Proponents:

Senator Chris Langemeier
Janet Woolsoncroft
Brian Vandeventer
Richard Hedrick
David Hibler
Della Wilson
Bruce Boettcher
Katie Zulkoski
John K. Hansen
Lara Skinner
Mark Welsch
Duane Hovorka
Amy Schaffer
Raymond Moller
Len Schropfer
David Hutchinson
Emily Levine
Ben Gotschall

Representing:

Introducer
Self
Self
Self
Self
Self
Self
Nebraska Chapter of the Sierra Club
Nebraska Farmers Union
Cornell University Global Labor Institute
Nebraskans for Peace; Nebraska Chapter of 350.org
Nebraska Wildlife Federation
Self
Self
Self
Self
Self
Self

Opponents:

Robert Jones
Ron Kaminski
David Carpenter
Patrick Pepper
Ken Mass
John Kuehn
Herb Knudsen
Mark Whitehead

Representing:

TransCanada Keystone Pipeline L.P.
LIUNA #1140
TransCanada Keystone Pipeline L.P.
McGrath North Mullin & Kratz PC LLC
Nebraska State AFL-CIO
Southern Power
Self
Nebraska Petroleum Marketers & Convenience Store

Thomas Byers
Dan Gunderson
Michael Whatley
Bill Sydow

Association
Magellan Midstream Partners
API
Consumer Energy Alliance
Nebraska Oil and Gas Conservation Commission

Neutral:

Anthony Swift
Cindy Myers
Robert Bernt

Representing:

Natural Resources Defense Council
Self
Self

Summary of purpose and/or changes:

LB 4 proposes adoption of the Oil Pipeline Route Certification Act. The act would create a certification process for the route of a proposed oil pipeline in Nebraska, and would require action by the Governor based on the recommendation of an appointed panel.

Explanation of amendments:

The committee amendment would clarify several provisions in and replace the original bill. LB 4, as amended by the committee amendment, would do the following:

Sections 1 through 11 contain new language creating the Oil Pipeline Route Certification Act and would do the following:

(Section 2) State a series of findings that:

- * demonstrate Nebraska's compelling interests in protecting and preserving its natural and agricultural resources, environment, aesthetics, and the state's economy and communities;
- * cite provisions in the Constitution of Nebraska and state statutes that describe the state's authority and obligation to protect and preserve its compelling interests;
- * cite provisions in the Constitution of Nebraska that describe the Legislature's authority to delegate the duty to administer certain statutes to the Governor and that declare the Governor as the state's supreme executive power.

(Section 3) Declare that the purpose of the act is to provide a procedure so that the state, through the Governor, may ensure the preservation and protection of Nebraska's interests in the general welfare, economy, agricultural resources, communities, environment, wildlife, and all natural resources whenever an oil pipeline is proposed to be placed in Nebraska.

(Section 4) Provide definitions to terms used in the bill, including that department means the Department of Environmental Quality, and oil pipeline means a pipeline constructed or operated in Nebraska for the transportation of petroleum or petroleum components, products or wastes, including crude oil or any fraction of crude oil, but excludes in-field flowlines and gathering lines.

(Section 5) Provide that a pipeline carrier shall not construct an oil pipeline in Nebraska before obtaining a route certificate.

(Section 6) Require pipeline carriers that are subject to the act to apply for and obtain a route certificate from the department prior to starting construction of an oil pipeline.

Provide for an application process and require that an application contain:

- * An agreement to pay reasonable expenses assessed pursuant to the act;
- * Identification information;
- * Proposed route description;
- * Statements explaining the rationale for the proposed route, alternate routes, and reasons for not choosing one of those routes;
- * Details of an emergency response plan;

* An explanation of precautions and mitigation measures that the pipeline carrier will take in light of the construction and operation of the pipeline; and

* Any other material the department requires.

Require the applicant to submit material submitted by or issued to them as part of any federal or state permit process.

Require the department to provide notice and hold a public meeting for the solicitation of public input and for the applicant to present its proposal for consideration.

(Section 7) Require the Governor to appoint a panel to review the application and advise the Governor regarding issuance of a route certificate.

Provide for members and terms of the Governor-appointed panel and require the Lieutenant Governor to serve as chairperson of the panel.

(Section 8) Authorize the department to adopt and promulgate rules and regulations, and require the department to provide administrative support to the panel.

Within 60 days after receiving the application, require the panel to make a recommendation to the Governor as to whether he or she should approve or deny such application based on information submitted by the applicant and consultations with any party with knowledge of the subject matter.

Require the panel to consider:

* whether the route interferes with the state's responsibility to protect the environment and natural resources and regulate land use and water;

* whether the route would have significant adverse impacts on the state's general welfare, economy, agricultural resources, aesthetics, or communities;

* whether the applicant and route comply with the Nebraska Ground Water Management and Protection Act;

* whether the applicant and route would likely violate the Nongame and Endangered Species Conservation Act;

* whether the application includes a written mitigation plan;

* whether a mitigation plan would address any significant adverse effects;

* whether the applicant has considered if another pipeline corridor exists that could be used;

* whether the route would impact the orderly development of the surrounding area; and

* whether public comment has been heard and considered.

Require the panel to recommend that the route certificate be issued if the applicant has affirmatively met the criteria;

If the panel finds that the criteria have not been met, recommend that the certificate be denied;

(Section 9) Require the Governor to approve or deny the application within thirty days of receiving the recommendation.

Require the department to issue a route certificate upon approval, or upon denial, an order stating the same.

If the Governor denies the application, allow the applicant to amend, within sixty days, its application and submit for reconsideration.

State that the Governor's action on the application is final and allow an appeal of such final order according to the Administrative Procedures Act.

(Section 10) Create the Oil Pipeline Route Certification Fund.

(Section 11) Create a process through which an applicant is assessed application fees.

(Section 12) Amend 57-1101 to require a route certificate and any other required Nebraska or federal permit to be obtained before eminent domain may be used under this section for an oil pipeline.

(Section 13) Provide a statement that the Governor is authorized to carry out the duties assigned by the Oil Pipeline Route Certification Act.

(Sections 14 and 16) Include a severability and emergency clause.

Chris Langemeier, Chairperson