

LEGISLATURE OF NEBRASKA
 ONE HUNDRED SECOND LEGISLATURE
 FIRST SPECIAL SESSION
LEGISLATIVE BILL 1

Introduced by Dubas, 34.

Read first time November 01, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to pipelines; to amend sections 57-1101,
 2 75-109.01, 75-110.01, 75-112, 75-118, 75-128, 75-129,
 3 75-130.01, 75-502, and 84-914, Reissue Revised Statutes
 4 of Nebraska; to change provisions relating to eminent
 5 domain for pipelines; to adopt the Major Oil Pipeline
 6 Siting Act; to change and provide powers and duties for
 7 the Public Service Commission; to provide severability;
 8 to repeal the original sections; and to declare an
 9 emergency.

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

1 Section 1. Section 57-1101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 57-1101 Any person engaged in, and any company,
4 corporation, or association formed or created for the purpose of,
5 transporting or conveying crude oil, petroleum, gases, or other
6 products thereof in interstate commerce through, or across the State
7 of Nebraska, or intrastate within the State of Nebraska, and desiring
8 or requiring a right-of-way or other interest in real estate, and
9 being unable to agree with the owner or lessee of any land, lot,
10 right-of-way, or other property for the amount of compensation for
11 the use and occupancy of so much of any lot, land, real estate,
12 right-of-way, or other property as may be reasonably necessary for
13 the laying, relaying, operation, and maintenance of any such pipeline
14 or the location of any plant or equipment necessary to operate such
15 pipeline, shall have the right to acquire the same for such purpose
16 through the exercise of the power of eminent domain, except that for
17 any major oil pipeline as defined in section 5 of this act to be
18 placed in operation in Nebraska after the effective date of this act,
19 any such person, company, corporation, or association shall apply for
20 and receive an order granting the application under the Major Oil
21 Pipeline Siting Act prior to having the rights provided under this
22 section. The procedure to condemn property shall be exercised in the
23 manner set forth in sections 76-704 to 76-724.

24 Sec. 2. Sections 2 to 12 of this act shall be known and
25 may be cited as the Major Oil Pipeline Siting Act.

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

3 (a) Ensure the welfare of Nebraskans, including
4 protection of property rights, aesthetic values, and economic
5 interests;

6 (b) Maximize the lawful protection of Nebraska's natural
7 resources by requiring the location of routes of major oil pipelines
8 within Nebraska to minimize pipeline intrusions on any land areas and
9 connected natural resources;

10 (c) Ensure that a major oil pipeline is not constructed
11 or operated within Nebraska without receiving the approval of the
12 commission under section 9 of this act;

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

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

17 (2) Nothing in the Major Oil Pipeline Siting Act shall be
18 construed to regulate any safety issue with respect to any aspect of
19 any interstate oil pipeline. The Major Oil Pipeline Siting Act is
20 intended to deal solely with the issue of siting or choosing the
21 location of the route aside and apart from safety considerations. The
22 Legislature acknowledges and respects the exclusive federal authority
23 over safety issues established by the federal law, the Pipeline
24 Safety Act of 1994, 49 U.S.C. 60101 et seq., and the express
25 preemption provision stated in that act. The Major Oil Pipeline

1 Siting Act is intended to exercise only the remaining sovereign
2 powers and purposes of Nebraska which are not included in the
3 category of safety regulation.

4 Sec. 4. The Legislature finds that:

5 (1) Nebraska has the authority as a sovereign state to
6 protect its land and natural resources for economic and aesthetic
7 purposes for the benefit of its residents and future generations by
8 regulation through approval or disapproval of major oil pipeline
9 siting and the location of routes, so long as it does not regulate in
10 the area of safety as to the construction, operation, maintenance,
11 decommissioning, or other circumstances surrounding a major oil
12 pipeline;

13 (2) The water and other natural resources in Nebraska
14 will become increasingly valuable, both economically and
15 strategically, as the demand for agricultural products for both food
16 and fuel increases;

17 (3) The construction of a major oil pipeline in Nebraska
18 may be in the public interest of Nebraska and the nation to meet the
19 increasing need for energy; and

20 (4) The irrigation economy of Nebraska which relies on
21 quality water adds over one billion dollars annually to net farm
22 income and increases the gross state product by three billion dollars
23 annually.

24 Sec. 5. For purposes of the Major Oil Pipeline Siting
25 Act:

1 (1) Commission means the Public Service Commission;

2 (2) Major oil pipeline means a pipeline which is larger
3 than six inches in inside diameter and which is constructed either
4 partially or wholly within Nebraska for the transportation of oil.
5 Major oil pipeline includes any part of such a pipeline;

6 (3) Oil means petroleum, including crude oil or any
7 fraction of crude oil; and

8 (4) Pipeline carrier means a person that engages in
9 owning, operating, or managing a major oil pipeline.

10 Sec. 6. (1) A pipeline carrier proposing to construct a
11 major oil pipeline to be placed in operation in Nebraska after the
12 effective date of this act shall file an application with the
13 commission and receive approval pursuant to section 9 of this act
14 prior to beginning construction of the oil pipeline within Nebraska.
15 A pipeline carrier proposing a substantive change to the route of a
16 major oil pipeline shall file an application for the proposed change
17 with the commission and receive approval pursuant to section 9 of
18 this act prior to beginning construction relating to the proposed
19 change. The applicant shall also file a copy of the application with
20 the agencies listed in subsection (3) of section 8 of this act.

21 (2) The application shall be accompanied by written
22 agreement to pay expenses assessed pursuant to section 7 of this act
23 and written testimony and exhibits in support of the application. The
24 application shall include:

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

1 (b) A description of the nature and proposed route of the
2 major oil pipeline and evidence of consideration of alternative
3 routes;

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

6 (d) A list of the governing bodies of the counties and
7 municipalities through which the proposed route of the major oil
8 pipeline would be located;

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

11 (f) The estimated number of employees to be employed in
12 Nebraska during construction of the major oil pipeline and during the
13 operating life of the major oil pipeline. The estimated number shall
14 specify the number of employees who may not live in Nebraska or in
15 the area affected by the major oil pipeline;

16 (g) The person who will own the major oil pipeline;

17 (h) The person who will manage the major oil pipeline;

18 (i) A plan to comply with the Oil Pipeline Reclamation
19 Act;

20 (j) A list of places along the proposed route which would
21 be in proximity to unusually sensitive ground water areas. For
22 purposes of this subdivision, unusually sensitive ground water areas
23 means an area underlain by a ground water resource that is unusually
24 sensitive to intrusions from a major oil pipeline. Unusually
25 sensitive ground water areas include areas where (i) a Class I

1 aquifer, as defined in 49 C.F.R. 195.6, as such regulation existed on
2 January 1, 2011, is used for water supply and (ii) there is not an
3 adequate alternative water source for water users, including users of
4 community water systems, nontransient noncommunity water systems,
5 private irrigation systems, private domestic supply wells, and
6 private livestock watering facilities; and

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

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

17 Sec. 7. (1) The commission shall assess the expenses
18 reasonably attributable to investigation and hearing regarding an
19 application filed under section 6 of this act, including expenses
20 billed by agencies filing reports as authorized in subsection (3) of
21 section 8 of this act and both direct and indirect expenses incurred
22 by the commission or its staff or consultants, to the applicant as
23 agreed under section 6 of this act.

24 (2) The commission shall ascertain the expenses of any
25 such investigation and hearing and by order assess such expenses

1 against the applicant and shall render a bill therefor, by United
2 States mail, to the applicant, either at the time the order under
3 section 9 of this act is issued or from time to time during such
4 application process. Such bill shall constitute notice of such
5 assessment and demand of payment thereof. Upon a bill rendered to
6 such applicant, within fifteen days after the mailing thereof, such
7 applicant shall pay to the commission the amount of the assessment
8 for which it is billed. The commission shall remit the payment to the
9 State Treasurer for credit to the Public Service Commission Pipeline
10 Regulation Fund for the use of the commission. The commission may
11 render bills in one fiscal year for costs incurred within a previous
12 fiscal year.

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 (b)
16 fails to file objections to the assessment with the commission as
17 provided in subsection (4) of this section, the commission shall
18 transmit to the State Treasurer a certified copy of the notice of
19 assessment, together with notice of neglect or refusal to pay the
20 assessment, and on the same day the commission shall mail by
21 registered mail to the applicant against which the assessment has
22 been made a copy of the notice which it has transmitted to the State
23 Treasurer. If any such applicant fails to pay such assessment to the
24 State Treasurer within ten days after receipt of such notice and
25 certified copy of such assessment, the assessment shall bear interest

1 at the rate of fifteen percent per annum from and after the date on
2 which the copy of the notice was mailed by registered mail to such
3 applicant.

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

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

1 assessment as provided in the case of an original assessment.

2 Sec. 8. (1) After receipt of an application under section
3 6 of this act, the commission shall:

4 (a) Schedule a public hearing;

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

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

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

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

19 (3) The following agencies shall file a report with the
20 commission, prior to the hearing on the application, regarding
21 information within the respective agencies' area of expertise
22 relating to the impact of the proposed major oil pipeline on any area
23 within the respective agencies' jurisdiction, including in such
24 report opinions regarding the advisability of granting, denying, or
25 modifying the location of the route of the proposed major oil

1 pipeline: The Department of Environmental Quality, the Department of
2 Natural Resources, the Department of Revenue, the Department of
3 Roads, the Game and Parks Commission, the Nebraska Oil and Gas
4 Conservation Commission, the Nebraska State Historical Society, the
5 State Fire Marshal, and the Board of Educational Lands and Funds. The
6 agencies may submit a request for reimbursement of expenses incurred
7 for any consultants hired pursuant to this subsection not to exceed
8 XXX thousand dollars.

9 (4) An application under the Major Oil Pipeline Siting
10 Act shall be granted if the major oil pipeline is determined by the
11 Public Service Commission to be in the public interest. The pipeline
12 carrier shall have the burden to establish that the proposed major
13 oil pipeline would serve the public interest. In determining whether
14 the pipeline carrier has met its burden, the commission shall
15 evaluate:

16 (a) Whether the pipeline carrier has demonstrated
17 compliance with all applicable state statutes, rules, and regulations
18 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 major
21 oil pipeline to the natural resources of Nebraska, including evidence
22 regarding the irreversible and irretrievable commitments of land
23 areas and connected natural resources, the depletion of beneficial
24 uses of the natural resources, and the possible intrusions to
25 unusually sensitive ground water areas required under subdivision (2)

1 (j) of section 6 of this act. Risk of depletion of beneficial uses of
2 natural resources other than by oil spills shall be heavily weighted
3 by the commission as against the public interest;

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

6 (d) Evidence regarding the economic and social impacts of
7 the proposed major oil pipeline;

8 (e) Evidence regarding the pipeline carrier's efforts to
9 ensure the welfare of the residents of the area along the proposed
10 route of the major oil pipeline;

11 (f) The impact of the proposed major oil pipeline on the
12 orderly development of the area around the route of the major oil
13 pipeline;

14 (g) The reports of the agencies filed pursuant to
15 subsection (3) of this section;

16 (h) The views of the governing bodies of the area around
17 the proposed route of the major oil pipeline; and

18 (i) The application and all materials submitted with the
19 application and any other relevant factors as determined by the
20 commission.

21 (5) The restrictions on ex parte communications set forth
22 in sections 75-130.01 and 84-914 shall not apply to proceedings
23 regarding an application under this section.

24 Sec. 9. (1) Within eight months after the receipt of the
25 application under section 6 of this act, the commission shall enter

1 an order granting the application or denying the application. The
2 commission shall include in the order the findings of the commission
3 regarding the application and the reasons for granting or denying the
4 application. The order granting the application shall state that the
5 application is in the public interest and shall authorize the
6 pipeline carrier to act under section 57-1101.

7 (2) The commission may, for just cause, extend the time
8 for the entry of an order under subsection (1) of this section. The
9 extension shall not exceed eighteen months after the public hearing
10 under section 8 of this act unless all parties agree to a longer
11 extension, except that no extension shall extend more than eight
12 months after the issuance of a presidential permit authorizing the
13 construction of the major oil pipeline.

14 (3) If the commission grants the application, the
15 pipeline carrier shall file a status report with the commission
16 regarding the construction of the major oil pipeline every six months
17 until the completion of the major oil pipeline within Nebraska. The
18 pipeline carrier shall notify the commission of the completion of the
19 major oil pipeline within Nebraska within thirty days after such
20 completion.

21 (4) If the commission denies the application, the
22 pipeline carrier may amend the denied application in accordance with
23 the findings of the commission and reapply within sixty days after
24 the issuance of the order denying the permit. Within sixty days after
25 the reapplication, the commission shall enter an order granting or

1 denying the reapplication after making new findings under subsection
2 (4) of section 8 of this act.

3 Sec. 10. Any party aggrieved by a decision of the
4 commission regarding an application under the Major Oil Pipeline
5 Siting Act may appeal. The appeal shall be in accordance with the
6 Administrative Procedure Act.

7 Sec. 11. The Public Service Commission Pipeline
8 Regulation Fund is created. The fund shall be administered by the
9 commission. The fund shall be used by the commission to carry out the
10 Major Oil Pipeline Siting Act. Any money in the fund available for
11 investment shall be invested by the state investment officer pursuant
12 to the Nebraska Capital Expansion Act and the Nebraska State Funds
13 Investment Act.

14 Sec. 12. The commission may contract for professional
15 services and expert assistance, including, but not limited to, the
16 services of engineers, accountants, attorneys, and economists, to
17 assist with reviewing applications under the Major Oil Pipeline
18 Siting Act.

19 Sec. 13. Section 75-109.01, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 75-109.01 Except as otherwise specifically provided by
22 law, the Public Service Commission shall have jurisdiction, as
23 prescribed, over the following subjects:

24 (1) Common carriers, generally, pursuant to sections
25 75-101 to 75-158;

1 (2) Grain pursuant to the Grain Dealer Act and the Grain
2 Warehouse Act and sections 89-1,104 to 89-1,108;

3 (3) Manufactured homes and recreational vehicles pursuant
4 to the Uniform Standard Code for Manufactured Homes and Recreational
5 Vehicles;

6 (4) Modular housing units pursuant to the Nebraska
7 Uniform Standards for Modular Housing Units Act;

8 (5) Motor carrier registration and safety pursuant to
9 sections 75-301 to 75-322, 75-369.03, 75-370, and 75-371;

10 (6) Pipeline carriers and rights-of-way pursuant to the
11 Major Oil Pipeline Siting Act, the State Natural Gas Regulation Act,
12 and sections 75-501 to 75-503. If the provisions of Chapter 75 are
13 inconsistent with the provisions of the Major Oil Pipeline Siting
14 Act, the provisions of the Major Oil Pipeline Siting Act control;

15 (7) Railroad carrier safety pursuant to sections 74-918,
16 74-919, 74-1323, and 75-401 to 75-430;

17 (8) Telecommunications carriers pursuant to the Automatic
18 Dialing-Announcing Devices Act, the Emergency Telephone
19 Communications Systems Act, the Enhanced Wireless 911 Services Act,
20 the Intrastate Pay-Per-Call Regulation Act, the Nebraska
21 Telecommunications Regulation Act, the Nebraska Telecommunications
22 Universal Service Fund Act, the Telecommunications Relay System Act,
23 the Telephone Consumer Slamming Prevention Act, and sections 86-574
24 to 86-580;

25 (9) Transmission lines and rights-of-way pursuant to

1 sections 70-301 and 75-702 to 75-724;

2 (10) Water service pursuant to the Water Service
3 Regulation Act; and

4 (11) Jurisdictional utilities governed by the State
5 Natural Gas Regulation Act. If the provisions of Chapter 75 are
6 inconsistent with the provisions of the State Natural Gas Regulation
7 Act, the provisions of the State Natural Gas Regulation Act control.

8 Sec. 14. Section 75-110.01, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 75-110.01 A summary of the authority or relief sought in
11 an application or petition shall be set out in the notice given
12 according to the rules the commission shall adopt. After notice of an
13 application or petition has been given as provided by the rules for
14 notice, the commission may process the application or petition
15 without a hearing by use of affidavits if the application or petition
16 is not opposed. The commission shall not deny an application or
17 petition of a common carrier, pipeline carrier, or jurisdictional
18 utility until after it has either given the applicant a hearing
19 thereon, or received the applicant's affidavits and made them a part
20 of the record.

21 Sec. 15. Section 75-112, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 75-112 (1) For purposes of carrying out the powers and
24 duties of the commission related to the subjects under its
25 jurisdiction enumerated in section 75-109.01, each commissioner and

1 examiner of the commission may:

2 (a) Administer oaths;

3 (b) Compel the attendance of witnesses;

4 (c) Examine any of the books, papers, documents, and
5 records of any motor carrier or regulated motor carrier as defined in
6 section 75-302 or common, ~~or~~ contract, or pipeline carrier subject to
7 the jurisdiction of the commission under section 75-109.01 or any
8 jurisdictional utility or have such examination made by any person
9 that the commission may employ for that purpose;

10 (d) Compel the production of such books, papers,
11 documents, and records; or

12 (e) Examine under oath or otherwise any officer,
13 director, agent, or employee of any such carrier or jurisdictional
14 utility or any other person.

15 (2) Any person employed by the commission to examine such
16 books, papers, documents, or records shall produce his or her
17 authority, under the hand and seal of the commission, to make such
18 examination.

19 (3) The commissioners may certify to all official acts of
20 the commission.

21 Sec. 16. Section 75-118, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 75-118 The commission shall:

24 (1) Fix all necessary rates, charges, and regulations
25 governing and regulating the transportation, storage, or handling of

1 household goods and passengers by any common carrier in Nebraska
2 intrastate commerce;

3 (2) Make all necessary classifications of household goods
4 that may be transported, stored, or handled by any common carrier in
5 Nebraska intrastate commerce, such classifications applying to and
6 being the same for all common carriers;

7 (3) Prevent and correct the unjust discriminations set
8 forth in section 75-126;

9 (4) Enforce all statutes and commission regulations
10 pertaining to rates and, if necessary, institute actions in the
11 appropriate court of any county in which the common carrier involved
12 operates except actions instituted pursuant to sections 75-140 and
13 75-156 to 75-158. All suits shall be brought and penalties recovered
14 in the name of the state by or under the direction of the Attorney
15 General; and

16 (5) Enforce the Major Oil Pipeline Siting Act and the
17 State Natural Gas Regulation Act.

18 Sec. 17. Section 75-128, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 75-128 (1) It is hereby declared to be the policy of the
21 Legislature that all matters presented to the commission be heard and
22 determined without delay. All matters requiring a hearing shall be
23 set for hearing at the earliest practicable date and in no event,
24 except for good cause shown, which showing shall be recited in the
25 order, shall the time fixed for hearing be more than six months after

1 the date of filing of the application, complaint, or petition on
2 which such hearing is to be had. Except in case of an emergency and
3 upon a motion to proceed with less than a quorum made by all parties
4 and supported by a showing of clear and convincing evidence of such
5 emergency and benefit to all parties, a quorum of the commission
6 shall hear all matters set for hearing. Except as otherwise provided
7 in the Major Oil Pipeline Siting Act or section 75-121 and except for
8 good cause shown, a decision of the commission shall be made and
9 filed within thirty days after completion of the hearing or after
10 submission of affidavits in nonhearing proceedings.

11 (2) In the case of any proceeding upon which a hearing is
12 held, the transcript of testimony shall be prepared and submitted to
13 the commission prior to entry of an order, except that it shall not
14 be necessary to have prepared prior to a commission decision the
15 transcripts of testimony on hearings involving noncontested
16 proceedings and hearings involving emergency rate applications under
17 section 75-121.

18 (3) For each application, complaint, or petition filed
19 with the commission, except those filed under sections 75-303.01 and
20 75-303.02, the Major Oil Pipeline Siting Act, or the State Natural
21 Gas Regulation Act, the commission shall charge a filing fee to be
22 determined by the commission, but in an amount not to exceed the sum
23 of five hundred dollars, payable at the time of such filing. The
24 commission shall also charge to persons regulated by the commission,
25 except persons regulated under the Major Oil Pipeline Siting Act or

1 the State Natural Gas Regulation Act, a hearing fee to be determined
2 by the commission, but in an amount not to exceed the sum of two
3 hundred fifty dollars, for each half day of hearings if the person
4 regulated by the commission files an application, complaint, or
5 petition which necessitates a hearing.

6 (4) For each new tariff filed with the commission, except
7 those filed under sections 75-301 to 75-322, the commission shall
8 charge a fee not to exceed fifty dollars. This subsection does not
9 apply to amendments to existing tariffs.

10 (5) The commission shall remit the fees received to the
11 State Treasurer for credit to the General Fund.

12 Sec. 18. Section 75-129, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 75-129 The commission may hold sessions at any place in
15 the state when deemed necessary to facilitate the discharge of its
16 duties and may conduct the hearing and other proceedings provided for
17 in sections 75-101 to 75-801, in the Major Oil Pipeline Siting Act,
18 in the State Natural Gas Regulation Act, or under any other law of
19 this state at such place or places in the state as may, in the
20 judgment of the commission, be the most convenient and practicable
21 for determining the particular matter before the commission. The
22 commission may hold public meetings as provided in section 8 of this
23 act.

24 Sec. 19. Section 75-130.01, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 75-130.01 With respect to any matter of fact or law at
2 issue in a contested case and notwithstanding any other provision of
3 law, a member, staff, or agent of the Public Service Commission shall
4 not during the pendency of any contested case heard before the
5 commission have any ex parte communication with any party having an
6 interest in the outcome of the contested case. For purposes of this
7 section, the definitions in section 84-901 shall apply.
8 Notwithstanding subdivision (4)(c) of section 84-901, this section
9 applies to all communications by a party in contested cases under the
10 State Natural Gas Regulation Act, including, but not limited to,
11 general rate filings under section 66-1838. This section shall not
12 apply to proceedings regarding an application under section 8 of this
13 act.

14 Sec. 20. Section 75-502, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 75-502 Pipeline carriers which are declared common
17 carriers under section 75-501 and pipeline carriers approved under
18 the Major Oil Pipeline Siting Act may store, transport, or convey any
19 liquid or gas, or the products thereof, and make reasonable charges
20 therefor, may lay down, construct, maintain, and operate pipelines,
21 tanks, pump stations, connections, fixtures, storage plants, and such
22 machinery, apparatus, devices, and arrangement as may be necessary to
23 operate such pipes or pipelines between different points in this
24 state, and may use and occupy such lands, rights-of-way, easements,
25 franchises, buildings, and structures as may be necessary to

1 construct and maintain them.

2 Sec. 21. Section 84-914, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 84-914 In contested cases:

5 (1) An agency may admit and give probative effect to
6 evidence which possesses probative value commonly accepted by
7 reasonably prudent persons in the conduct of their affairs and
8 exclude incompetent, irrelevant, immaterial, and unduly repetitious
9 evidence. An agency shall give effect to the rules of privilege
10 recognized by law. Any party to a formal hearing before an agency,
11 from which a decision may be appealed to the courts of this state,
12 may request that the agency be bound by the rules of evidence
13 applicable in district court by delivering to the agency at least
14 three days prior to the holding of the hearing a written request
15 therefor. Such request shall include the requesting party's agreement
16 to be liable for the payment of costs incurred thereby and upon any
17 appeal or review thereof, including the cost of court reporting
18 services which the requesting party shall procure for the hearing.
19 All costs of a formal hearing shall be paid by the party or parties
20 against whom a final decision is rendered;

21 (2) The hearing officer or a designee, at the request of
22 any party or upon the hearing officer's own motion, may administer
23 oaths and issue subpoenas, discovery orders, and protective orders in
24 accordance with the rules of civil procedure except as may otherwise
25 be prescribed by law. Subpoenas and orders issued under this

1 subsection may be enforced by the district court;

2 (3) All evidence including records and documents in the
3 possession of the agency of which it desires to avail itself shall be
4 offered and made a part of the record in the case. No factual
5 information or evidence other than the record shall be considered in
6 the determination of the case. Documentary evidence may be received
7 in the form of copies or excerpts or incorporated by reference;

8 (4) Every party shall have the right of cross-examination
9 of witnesses who testify and shall have the right to submit rebuttal
10 evidence;

11 (5) An agency may take official notice of cognizable
12 facts and in addition may take official notice of general, technical,
13 or scientific facts within its specialized knowledge and the rules
14 and regulations adopted and promulgated by such agency. Parties shall
15 be notified either before or during the hearing or by reference in
16 preliminary reports or otherwise of material so noticed. Parties
17 shall be afforded an opportunity to contest facts so noticed. The
18 record shall contain a written record of everything officially
19 noticed. An agency may utilize its experience, technical competence,
20 and specialized knowledge in the evaluation of the evidence presented
21 to it; and

22 (6) Except as otherwise provided in section 8 of this
23 act:

24 ~~(6)~~(a) No party in a contested case or other person
25 outside the agency having an interest in the contested case shall

1 make or knowingly cause to be made an ex parte communication to the
2 hearing officer or to an agency head or employee who is or may
3 reasonably be expected to be involved in the decisionmaking process
4 of the contested case; -

5 (b) No hearing officer or agency head or employee who is
6 or may reasonably be expected to be involved in the decisionmaking
7 process of the contested case shall make or knowingly cause to be
8 made an ex parte communication to any party in a contested case or
9 other person outside the agency having an interest in the contested
10 case; -

11 (c) No agency head or employee engaged in the
12 investigation or enforcement of a contested case shall make or
13 knowingly cause to be made an ex parte communication to a hearing
14 officer or agency head or employee who is or may reasonably be
15 expected to be involved in the decisionmaking process of the
16 contested case; -

17 (d) The hearing officer or agency head or employee who is
18 or may reasonably be expected to be involved in the decisionmaking
19 process of the contested case who receives or who makes or knowingly
20 causes to be made an ex parte communication set forth in subdivisions
21 (6)(a) through (c) of this section shall file in the record of the
22 contested case (i) all such written communications, (ii) memoranda
23 stating the substance of all such oral communications, and (iii) all
24 written responses and memoranda stating the substance of all oral
25 responses to all the ex parte communications. The filing shall be

1 made within two working days of the receipt or making of the ex parte
2 communication. Notice of the filing, with an opportunity to respond,
3 shall be given to all parties of record; -

4 (e) The prohibitions of subdivision (6) of this section
5 shall apply beginning at the time notice for hearing is given. An
6 agency may designate an earlier time, but such earlier time shall be
7 required to be set forth in the agency's rules of procedure; and -

8 (f) The prohibitions contained in subdivisions (6)(a) and
9 (b) of this section shall not apply to ex parte communications to or
10 from an elected official. However, the disclosure requirements
11 contained in subdivision (6)(d) of this section shall apply to ex
12 parte communications to or from an elected official.

13 Sec. 22. If any section in this act or any part of any
14 section is declared invalid or unconstitutional, the declaration
15 shall not affect the validity or constitutionality of the remaining
16 portions.

17 Sec. 23. Original sections 57-1101, 75-109.01, 75-110.01,
18 75-112, 75-118, 75-128, 75-129, 75-130.01, 75-502, and 84-914,
19 Reissue Revised Statutes of Nebraska, are repealed.

20 Sec. 24. Since an emergency exists, this act takes effect
21 when passed and approved according to law.