

AMENDMENTS TO LB 1161

Introduced by Langemeier

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 comply with section 3,  
2 Legislative Bill 4, One Hundred Second Legislature, First Special  
3 Session, 2011, as amended by the One Hundred Second Legislature,  
4 Second Session, 2012, and receive the approval of the Governor for  
5 the route of the pipeline under such section or shall apply for  
6 and receive an order approving the application under the Major  
7 Oil Pipeline Siting Act, prior to having the rights provided  
8 under this section. If condemnation procedures have not been  
9 commenced within two years after the date the Governor's approval  
10 is granted or after the date of receipt of an order approving an  
11 application under the Major Oil Pipeline Siting Act, the right  
12 under this section expires. The procedure to condemn property shall  
13 be exercised in the manner set forth in sections 76-704 to 76-724.

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

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

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

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

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

27           (a) Ensure the welfare of Nebraskans, including

1 protection of property rights, aesthetic values, and economic  
2 interests;

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

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

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

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

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

25 ~~(3) The Major Oil Pipeline Siting Act shall not apply to~~  
26 ~~any major oil pipeline that has submitted an application to the~~  
27 ~~United States Department of State pursuant to Executive Order 13337~~

1 ~~prior to the effective date of this act.~~

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

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

6           (1) Commission means the Public Service Commission;

7           (2) Major oil pipeline means a pipeline which is larger  
8 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) 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~~  
19 ~~this act,~~ If a pipeline carrier proposing proposes to construct  
20 a major oil pipeline to be placed in operation in Nebraska after  
21 the effective date of this act and the pipeline carrier has  
22 submitted a route for an oil pipeline within, through, or across  
23 Nebraska but the route is not approved by the Governor pursuant  
24 to section 3, Legislative Bill 4, One Hundred Second Legislature,  
25 First Special Session, 2011, as amended by the One Hundred Second  
26 Legislature, Second Session, 2012, the pipeline carrier shall file  
27 an application with the commission and receive approval pursuant to

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

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

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

20 (b) A description of the nature and proposed route of  
21 the major oil pipeline and evidence of consideration of alternative  
22 routes;

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

25 (d) A list of the governing bodies of the counties and  
26 municipalities through which the proposed route of the major oil  
27 pipeline would be located;

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

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

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

5 (h) A plan to comply with the Oil Pipeline Reclamation  
6 Act; and

7 (i) A list of planned methods to minimize or mitigate  
8 the 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  
13 copy of such notice to the commission. The applicant shall serve  
14 notice of the application upon the governing bodies of the counties  
15 and municipalities specified pursuant to subdivision (2)(d) of this  
16 section.

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

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

20 (i) Evaluate any route for an oil pipeline within,  
21 through, or across the state and submitted by a pipeline carrier  
22 for the stated purpose of being included in a federal agency's  
23 or agencies' National Environmental Policy Act review process. Any  
24 such evaluation shall include at least one public hearing, provide  
25 opportunities for public review and comment, and include, but not  
26 be limited to, an analysis of the environmental, economic, social,  
27 and other impacts associated with the proposed route and route

1 alternatives in Nebraska. The department may collaborate with a  
2 federal agency or agencies and set forth the responsibilities and  
3 schedules that will lead to an effective and timely evaluation; or  
4 collaborate (ii) Collaborate with a federal agency or  
5 agencies in a review under the National Environmental Policy Act  
6 involving a supplemental environmental impact statement for oil  
7 pipeline projects within, through, or across the state. Prior  
8 to entering into such shared jurisdiction and authority, the  
9 department shall collaborate with such agencies to set forth  
10 responsibilities and schedules for an effective and timely review  
11 process.

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

19 (b) A pipeline carrier that has submitted a route for  
20 evaluation or review pursuant to subdivision (1)(a) of this section  
21 shall reimburse the department for the cost of the evaluation or  
22 review within sixty days after notification from the department of  
23 the cost. The department shall remit any reimbursement to the State  
24 Treasurer for credit to the Department of Environmental Quality  
25 Cash Fund.

26 (2) Since the objectives of the process are to ensure  
27 adequate information gathering, full and careful agency and public

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

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

19 (4) After the supplemental environmental impact statement  
20 or the evaluation conducted under subdivision (1)(a) of this  
21 section is prepared, the department shall submit it to the  
22 Governor. Within thirty days after receipt of the supplemental  
23 environmental impact statement or the evaluation conducted under  
24 subdivision (1)(a) of this section from the department, the  
25 Governor shall indicate, in writing, to the federal agency or  
26 agencies involved in the review or any other appropriate federal  
27 agency or body as to whether he or she approves any of the routes

1 reviewed in the supplemental environmental impact statement or the  
2 evaluation conducted under subdivision (1)(a) of this section. If  
3 the Governor does not approve any of the reviewed routes, he or she  
4 shall notify the pipeline carrier that in order to obtain approval  
5 of a route in Nebraska the pipeline carrier is required to file  
6 an application with the Public Service Commission pursuant to the  
7 Major Oil Pipeline Siting Safety Act.

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

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

18 Sec. 9. If any section in this act or any part of any  
19 section is declared invalid or unconstitutional, the declaration  
20 shall not affect the validity or constitutionality of the remaining  
21 portions.

22 Sec. 10. Original section 57-1101, Reissue Revised  
23 Statutes of Nebraska, as amended by section 1, Legislative  
24 Bill 1, One Hundred Second Legislature, First Special Session,  
25 2011, sections 2, 3, 5, and 6, Legislative Bill 1, One Hundred  
26 Second Legislature, First Special Session, 2011, and section 3,  
27 Legislative Bill 4, One Hundred Second Legislature, First Special

1 Session, 2011, are repealed.

2           Sec. 11. Since an emergency exists, this act takes effect

3 when passed and approved according to law.