

AMENDMENTS TO LB 1

Introduced by Dubas

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, is amended to read:

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

1 Act prior to having the rights provided under this section. The  
2 procedure to condemn property shall be exercised in the manner set  
3 forth in sections 76-704 to 76-724.

4 Sec. 2. Sections 2 to 13 of this act shall be known and  
5 may be cited as the Major Oil Pipeline Siting Act.

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

8 (a) Ensure the welfare of Nebraskans, including  
9 protection of property rights, aesthetic values, and economic  
10 interests;

11 (b) Consider the lawful protection of Nebraska's natural  
12 resources in determining the location of routes of major oil  
13 pipelines within Nebraska;

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

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

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

21 (2) Nothing in the Major Oil Pipeline Siting Act shall be  
22 construed to regulate any safety issue with respect to any aspect  
23 of any interstate oil pipeline. The Major Oil Pipeline Siting Act  
24 is intended to deal solely with the issue of siting or choosing the  
25 location of the route aside and apart from safety considerations.  
26 The Legislature acknowledges and respects the exclusive federal  
27 authority over safety issues established by the federal law, the

1 Pipeline Safety Act of 1994, 49 U.S.C. 60101 et seq., and the  
2 express preemption provision stated in that act. The Major Oil  
3 Pipeline Siting Act is intended to exercise only the remaining  
4 sovereign powers and purposes of Nebraska which are not included in  
5 the category of safety regulation.

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

10 Sec. 4. The Legislature finds that:

11 (1) Nebraska has the authority as a sovereign state to  
12 protect its land and natural resources for economic and aesthetic  
13 purposes for the benefit of its residents and future generations  
14 by regulation through approval or disapproval of major oil pipeline  
15 siting and the location of routes, so long as it does not regulate  
16 in the area of safety as to the design, installation, inspection,  
17 emergency plans and procedures, testing, construction, extension,  
18 operation, replacement, and maintenance of major oil pipelines and  
19 pipeline facilities;

20 (2) The water and other natural resources in Nebraska  
21 will become increasingly valuable, both economically and  
22 strategically, as the demand for agricultural products for both  
23 food and fuel increases;

24 (3) The construction of major oil pipelines in Nebraska  
25 is in the public interest of Nebraska and the nation to meet the  
26 increasing need for energy; and

27 (4) The irrigation economy of Nebraska which relies on

1 quality water adds over one billion dollars annually to net farm  
2 income and increases the gross state product by three billion  
3 dollars annually.

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,  
12 but 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. (1) Unless exempt pursuant to section 3 of this  
17 act, a pipeline carrier proposing to construct a major oil pipeline  
18 to be placed in operation in Nebraska after the effective date of  
19 this act shall file an application with the commission and receive  
20 approval pursuant to section 9 of this act prior to beginning  
21 construction of the major oil pipeline within Nebraska. A pipeline  
22 carrier proposing a substantive change to the route of a major oil  
23 pipeline shall file an application for the proposed change with the  
24 commission and receive approval pursuant to section 9 of this act  
25 prior to beginning construction relating to the proposed change.  
26 The applicant shall also file a copy of the application with the  
27 agencies listed in subsection (3) of section 8 of this act.

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

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

6           (b) A description of the nature and proposed route of  
7 the major oil pipeline and evidence of consideration of alternative  
8 routes;

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

11           (d) A list of the governing bodies of the counties and  
12 municipalities through which the proposed route of the major oil  
13 pipeline would be located;

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

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

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

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

20           (i) A list of planned methods to minimize or mitigate  
21 the potential impacts of the major oil pipeline to land areas and  
22 connected natural resources other than with respect to oil spills.

23           (3) The applicant shall publish notice of the application  
24 in at least one newspaper of general circulation in each county in  
25 which the major oil pipeline is to be constructed and forward a  
26 copy of such notice to the commission. The applicant shall serve  
27 notice of the application upon the governing bodies of the counties

1 and municipalities specified pursuant to subdivision (2) (d) of this  
2 section.

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

10           (2) The commission shall ascertain the expenses of any  
11 such investigation and hearing and by order assess such expenses  
12 against the applicant and shall render a bill therefor, by United  
13 States mail, to the applicant, either at the time the order under  
14 section 9 of this act is issued or from time to time during such  
15 application process. Such bill shall constitute notice of such  
16 assessment and demand of payment thereof. Upon a bill rendered to  
17 such applicant, within fifteen days after the mailing thereof, such  
18 applicant shall pay to the commission the amount of the assessment  
19 for which it is billed. The commission shall remit the payment to  
20 the State Treasurer for credit to the Public Service Commission  
21 Pipeline Regulation Fund. The commission may render bills in one  
22 fiscal year for costs incurred within a previous fiscal year.  
23 The commission shall direct the State Treasurer to credit any  
24 reimbursement of expenses billed by agencies pursuant to subsection  
25 (3) of section 8 of this act to the appropriate fund of the  
26 appropriate agency.

27           (3) If any applicant against which an assessment has been

1 made pursuant to this section, within fifteen days after the notice  
2 of such assessment, (a) neglects or refuses to pay the same or (b)  
3 fails to file objections to the assessment with the commission as  
4 provided in subsection (4) of this section, the commission shall  
5 transmit to the State Treasurer a certified copy of the notice  
6 of assessment, together with notice of neglect or refusal to pay  
7 the assessment, and on the same day the commission shall mail by  
8 registered mail to the applicant against which the assessment has  
9 been made a copy of the notice which it has transmitted to the  
10 State Treasurer. If any such applicant fails to pay such assessment  
11 to the State Treasurer within ten days after receipt of such notice  
12 and certified copy of such assessment, the assessment shall bear  
13 interest at the rate of fifteen percent per annum from and after  
14 the date on which the copy of the notice was mailed by registered  
15 mail to such applicant.

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

27 (5) If any assessment against which objections have been

1 filed is not paid within ten days after service of an order finding  
2 that such objections have been overruled and disallowed by the  
3 commission, the commission shall give notice of such delinquency to  
4 the State Treasurer and to the applicant in the manner provided for  
5 in subsection (3) of this section. The State Treasurer shall then  
6 collect the amount of such assessment. If an amended assessment  
7 is not paid within ten days after service of the order of the  
8 commission, the commission shall notify the State Treasurer and  
9 the applicant as in the case of delinquency in the payment of an  
10 original assessment. The State Treasurer shall then collect the  
11 amount of such assessment as provided in the case of an original  
12 assessment.

13 Sec. 8. (1) After receipt of an application under section  
14 6 of this act, the commission shall:

15 (a) Within sixty days, schedule a public hearing;

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

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

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

26 (2) The commission may hold additional public meetings  
27 for the purpose of receiving input from the public at locations

1 as close as practicable to the proposed route of the major oil  
2 pipeline. The commission shall make the public input part of the  
3 record.

4 (3) If requested by the commission, the following  
5 agencies shall file a report with the commission, prior to the  
6 hearing on the application, regarding information within the  
7 respective agencies' area of expertise relating to the impact of  
8 the major oil pipeline on any area within the respective agencies'  
9 jurisdiction, including in such report opinions regarding the  
10 advisability of approving, denying, or modifying the location of  
11 the proposed route of the major oil pipeline: The Department of  
12 Environmental Quality, the Department of Natural Resources, the  
13 Department of Revenue, the Department of Roads, the Game and Parks  
14 Commission, the Nebraska Oil and Gas Conservation Commission, the  
15 Nebraska State Historical Society, the State Fire Marshal, and  
16 the Board of Educational Lands and Funds. The agencies may submit  
17 a request for reimbursement of reasonable and necessary expenses  
18 incurred for any consultants hired pursuant to this subsection.

19 (4) An application under the Major Oil Pipeline Siting  
20 Act shall be approved if the proposed route of the major oil  
21 pipeline is determined by the Public Service Commission to be in  
22 the public interest. The pipeline carrier shall have the burden to  
23 establish that the proposed route of the major oil pipeline would  
24 serve the public interest. In determining whether the pipeline  
25 carrier has met its burden, the commission shall not evaluate  
26 safety considerations, including the risk or impact of spills  
27 or leaks from the major oil pipeline, but the commission shall

1 evaluate:

2 (a) Whether the pipeline carrier has demonstrated  
3 compliance with all applicable state statutes, rules, and  
4 regulations and local ordinances;

5 (b) Evidence of the impact due to intrusion upon natural  
6 resources and not due to safety of the proposed route of the  
7 major oil pipeline to the natural resources of Nebraska, including  
8 evidence regarding the irreversible and irretrievable commitments  
9 of land areas and connected natural resources and the depletion of  
10 beneficial uses of the natural resources;

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

13 (d) Evidence regarding the economic and social impacts of  
14 the major oil pipeline;

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

18 (f) The impact of the major oil pipeline on the orderly  
19 development of the area around the proposed route of the major oil  
20 pipeline;

21 (g) The reports of the agencies filed pursuant to  
22 subsection (3) of this section; and

23 (h) The views of the governing bodies of the counties and  
24 municipalities in the area around the proposed route of the major  
25 oil pipeline.

26 Sec. 13. The commission may contract for professional  
27 services and expert assistance, including, but not limited to, the

1 services of engineers, hydrogeologists, accountants, attorneys, and  
2 economists, to assist with reviewing applications under the Major  
3 Oil Pipeline Siting Act.

4           Sec. 14. Section 75-109.01, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           75-109.01 Except as otherwise specifically provided by  
7 law, the Public Service Commission shall have jurisdiction, as  
8 prescribed, over the following subjects:

9           (1) Common carriers, generally, pursuant to sections  
10 75-101 to 75-158;

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

13           (3) Manufactured homes and recreational vehicles  
14 pursuant to the Uniform Standard Code for Manufactured Homes and  
15 Recreational Vehicles;

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

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

20           (6) Pipeline carriers and rights-of-way pursuant to the  
21 Major Oil Pipeline Siting Act, the State Natural Gas Regulation  
22 Act, and sections 75-501 to 75-503. If the provisions of Chapter  
23 75 are inconsistent with the provisions of the Major Oil Pipeline  
24 Siting Act, the provisions of the Major Oil Pipeline Siting Act  
25 control;

26           (7) Railroad carrier safety pursuant to sections 74-918,  
27 74-919, 74-1323, and 75-401 to 75-430;

1           (8) Telecommunications carriers pursuant to the  
2 Automatic Dialing-Announcing Devices Act, the Emergency Telephone  
3 Communications Systems Act, the Enhanced Wireless 911 Services  
4 Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska  
5 Telecommunications Regulation Act, the Nebraska Telecommunications  
6 Universal Service Fund Act, the Telecommunications Relay System  
7 Act, the Telephone Consumer Slamming Prevention Act, and sections  
8 86-574 to 86-580;

9           (9) Transmission lines and rights-of-way pursuant to  
10 sections 70-301 and 75-702 to 75-724;

11           (10) Water service pursuant to the Water Service  
12 Regulation Act; and

13           (11) Jurisdictional utilities governed by the State  
14 Natural Gas Regulation Act. If the provisions of Chapter 75  
15 are inconsistent with the provisions of the State Natural Gas  
16 Regulation Act, the provisions of the State Natural Gas Regulation  
17 Act control.

18           Sec. 15. Section 75-110.01, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           75-110.01 A summary of the authority or relief sought in  
21 an application or petition shall be set out in the notice given  
22 according to the rules the commission shall adopt. After notice  
23 of an application or petition has been given as provided by the  
24 rules for notice, the commission may process the application or  
25 petition without a hearing by use of affidavits if the application  
26 or petition is not opposed. The commission shall not deny an  
27 application or petition of a common carrier, pipeline carrier,

1 or jurisdictional utility until after it has either given the  
2 applicant a hearing thereon, or received the applicant's affidavits  
3 and made them a part of the record.

4 Sec. 16. Section 75-112, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 75-112 (1) For purposes of carrying out the powers  
7 and duties of the commission related to the subjects under its  
8 jurisdiction enumerated in section 75-109.01, each commissioner and  
9 examiner of the commission may:

10 (a) Administer oaths;

11 (b) Compel the attendance of witnesses;

12 (c) Examine any of the books, papers, documents, and  
13 records of any motor carrier or regulated motor carrier as  
14 defined in section 75-302 or common, ~~or~~ contract, or pipeline  
15 carrier subject to the jurisdiction of the commission under section  
16 75-109.01 or any jurisdictional utility or have such examination  
17 made by any person that the commission may employ for that purpose;

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

20 (e) Examine under oath or otherwise any officer,  
21 director, agent, or employee of any such carrier or jurisdictional  
22 utility or any other person.

23 (2) Any person employed by the commission to examine  
24 such books, papers, documents, or records shall produce his or her  
25 authority, under the hand and seal of the commission, to make such  
26 examination.

27 (3) The commissioners may certify to all official acts of

1 the commission.

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

4           75-128 (1) It is hereby declared to be the policy of the  
5 Legislature that all matters presented to the commission be heard  
6 and determined without delay. All matters requiring a hearing shall  
7 be set for hearing at the earliest practicable date and in no  
8 event, except for good cause shown, which showing shall be recited  
9 in the order, shall the time fixed for hearing be more than six  
10 months after the date of filing of the application, complaint,  
11 or petition on which such hearing is to be had. Except in case  
12 of an emergency and upon a motion to proceed with less than a  
13 quorum made by all parties and supported by a showing of clear and  
14 convincing evidence of such emergency and benefit to all parties,  
15 a quorum of the commission shall hear all matters set for hearing.  
16 Except as otherwise provided in the Major Oil Pipeline Siting Act  
17 or section 75-121 and except for good cause shown, a decision of  
18 the commission shall be made and filed within thirty days after  
19 completion of the hearing or after submission of affidavits in  
20 nonhearing proceedings.

21           (2) In the case of any proceeding upon which a hearing is  
22 held, the transcript of testimony shall be prepared and submitted  
23 to the commission prior to entry of an order, except that it shall  
24 not be necessary to have prepared prior to a commission decision  
25 the transcripts of testimony on hearings involving noncontested  
26 proceedings and hearings involving emergency rate applications  
27 under section 75-121.

1           (3) For each application, complaint, or petition filed  
2 with the commission, except those filed under sections 75-303.01  
3 and 75-303.02, the Major Oil Pipeline Siting Act, or the State  
4 Natural Gas Regulation Act, the commission shall charge a filing  
5 fee to be determined by the commission, but in an amount not to  
6 exceed the sum of five hundred dollars, payable at the time of  
7 such filing. The commission shall also charge to persons regulated  
8 by the commission, except persons regulated under the Major Oil  
9 Pipeline Siting Act or the State Natural Gas Regulation Act, a  
10 hearing fee to be determined by the commission, but in an amount  
11 not to exceed the sum of two hundred fifty dollars, for each half  
12 day of hearings if the person regulated by the commission files an  
13 application, complaint, or petition which necessitates a hearing.

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

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

20           Sec. 19. Section 75-129, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           75-129 The commission may hold sessions at any place in  
23 the state when deemed necessary to facilitate the discharge of its  
24 duties and may conduct the hearing and other proceedings provided  
25 for in sections 75-101 to 75-801, in the Major Oil Pipeline  
26 Siting Act, in the State Natural Gas Regulation Act, or under any  
27 other law of this state at such place or places in the state as

1 may, in the judgment of the commission, be the most convenient  
2 and practicable for determining the particular matter before the  
3 commission. The commission may hold public meetings as provided in  
4 section 8 of this act.

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

7           75-502 Pipeline carriers which are declared common  
8 carriers under section 75-501, pipeline carriers approved under the  
9 Major Oil Pipeline Siting Act, and pipeline carriers for which  
10 the Governor approves a route under section 3 of Legislative  
11 Bill 4, One Hundred Second Legislature, First Special Session,  
12 2011, may store, transport, or convey any liquid or gas, or  
13 the products thereof, and make reasonable charges therefor, may  
14 lay down, construct, maintain, and operate pipelines, tanks,  
15 pump stations, connections, fixtures, storage plants, and such  
16 machinery, apparatus, devices, and arrangement as may be necessary  
17 to operate such pipes or pipelines between different points in this  
18 state, and may use and occupy such lands, rights-of-way, easements,  
19 franchises, buildings, and structures as may be necessary to  
20 construct and maintain them.

21           Sec. 21. If any section in this act or any part of any  
22 section is declared invalid or unconstitutional, the declaration  
23 shall not affect the validity or constitutionality of the remaining  
24 portions.

25           Sec. 22. Original sections 57-1101, 75-109.01, 75-110.01,  
26 75-112, 75-118, 75-128, 75-129, and 75-502, Reissue Revised  
27 Statutes of Nebraska, are repealed.

1                   Sec. 23. Since an emergency exists, this act takes effect  
2 when passed and approved according to law.