

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 340

Introduced by Dubas, 34; Fischer, 43; Fulton, 29; Haar, 21;
Sullivan, 41.

Read first time January 12, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to pipelines; to amend sections 57-1101, 57-1102,
2 57-1103, 57-1104, 57-1105, and 57-1106, Reissue Revised
3 Statutes of Nebraska; to adopt the Hazardous Liquid
4 Pipeline Notification Act; to change provisions relating
5 to eminent domain for pipelines; to provide severability;
6 to repeal the original sections; and to declare an
7 emergency.

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

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Hazardous Liquid Pipeline Notification Act.

3 Sec. 2. For purposes of the Hazardous Liquid Pipeline
4 Notification Act:

5 (1) Commission means the Public Service Commission;

6 (2) Hazardous liquid means petroleum, including crude oil
7 or any fraction of crude oil; and

8 (3) Pipeline carrier means a person that engages in
9 owning, operating, or managing a pipeline or part of a pipeline for
10 the transportation of hazardous liquid.

11 Sec. 3. The purpose of the Hazardous Liquid Pipeline
12 Notification Act is to ensure that in making decisions to place
13 pipelines through this state for the transportation of hazardous
14 liquid the following items are taken into consideration: Protection
15 of the state's natural resources, socioeconomic impacts, informing
16 the public, and opportunity for public input.

17 Sec. 4. (1) A pipeline carrier proposing to engage in
18 owning, operating, or managing a pipeline or part of a pipeline for
19 the transportation of hazardous liquid to be placed in operation in
20 this state after the effective date of this act shall file an
21 application with the commission. The applicant shall file the
22 application prior to beginning construction of the pipeline or any
23 part of the pipeline within Nebraska and shall also file a copy of
24 the application with the register of deeds in each county in which
25 the pipeline is to be constructed.

1 (2) The application shall be accompanied by prefiled
2 testimony and exhibits in support of the application. The application
3 shall include:

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

5 (b) A description of the nature and location or route of
6 the pipeline or any part of the pipeline;

7 (c) The hazardous liquid to be transported through the
8 pipeline;

9 (d) The estimated number of employees to be employed in
10 this state during construction of the pipeline and during the
11 operating life of the pipeline. The estimated number shall include
12 the employees who may not live in this state or in the area affected
13 by the pipeline;

14 (e) A statement of the reasons for the selection of the
15 proposed location or route of the pipeline;

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

17 (g) The person who will manage the proposed pipeline; and

18 (h) An environmental impact statement evaluating the
19 environmental consequences that could result within Nebraska from
20 construction of the pipeline.

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

24 Sec. 5. (1) The commission shall hold a public hearing to
25 receive evidence regarding the application within thirty days after

1 notice of the hearing is published. The commission may hold public
2 meetings for the purpose of receiving input from the public at
3 locations as close as practicable to the proposed route of the
4 pipeline.

5 (2) The pipeline carrier shall have the burden to
6 establish that the proposed pipeline would serve the public interest.
7 In determining whether the pipeline carrier has met its burden, the
8 commission shall evaluate:

9 (a) Whether the pipeline carrier has demonstrated
10 compliance with all applicable state statutes, rules, and
11 regulations;

12 (b) Evidence regarding the environmental, economic, and
13 social impacts of the proposed pipeline;

14 (c) Evidence regarding the pipeline carrier's efforts to
15 ensure the health, safety, or welfare of the residents of the area
16 along the proposed route of the pipeline;

17 (d) The impact of the proposed pipeline on the orderly
18 development of the area around the route of the pipeline;

19 (e) The views of the governing bodies of the area around
20 the route of the pipeline; and

21 (f) Any other relevant factors as determined by the
22 commission.

23 Sec. 6. (1) After the public hearing under section 5 of
24 this act, the commission shall enter an order granting or denying the
25 application.

1 (2) If the commission grants the application, the
2 pipeline carrier shall file a status report with the commission
3 regarding the construction of the pipeline every six months. The
4 pipeline carrier shall notify the commission of the completion of the
5 pipeline within Nebraska within thirty days after such completion.

6 (3) Prior to making any change to the route of the
7 pipeline or any other substantial change to the project as outlined
8 in the original application, the pipeline carrier shall notify the
9 commission.

10 (4) Any person aggrieved by a decision of the commission
11 regarding an application under the Hazardous Liquid Pipeline
12 Notification Act may appeal to the commission which shall follow the
13 procedures for contested cases required by the Administrative
14 Procedure Act.

15 Sec. 7. The commission shall, by order, assess to an
16 applicant under the Hazardous Liquid Pipeline Notification Act the
17 costs and expenses reasonably attributable to the processing and
18 review of the application, including both direct and indirect
19 expenses incurred by the commission, and the costs of any consultants
20 employed to provide recommendations or otherwise assist the
21 commission in the review of the application. The commission may
22 assess costs and expenses to an applicant which were incurred in a
23 previous fiscal year. The costs and expenses shall be assessed
24 beginning on the date the application is filed. The order shall be
25 mailed to the applicant by United States mail. The applicant shall

1 remit payment to the commission within fifteen days after the date
2 the order is mailed. The commission shall remit payments to the State
3 Treasurer for credit to the Public Service Commission Pipeline
4 Regulation Fund for the use of the commission.

5 Sec. 8. (1) A pipeline carrier whose application is
6 granted under the Hazardous Liquid Pipeline Notification Act may
7 exercise the right of eminent domain to acquire right-of-way in the
8 manner set forth in sections 76-704 to 76-724.

9 (2) Any such pipeline carrier, in the laying, relaying,
10 operation, and maintenance of such pipeline within the State of
11 Nebraska, shall have the right to enter upon and cross, with such
12 pipeline, any public road or highway, under such reasonable
13 regulations and restrictions as may be prescribed by the Department
14 of Roads, if it is a state or federal highway, or by the county board
15 of each county, as to all other public roads and highways within such
16 county, and shall also have the right to lay, relay, operate, and
17 maintain such pipeline in and along any public road or highway.

18 (3) Any such pipeline carrier desiring or requiring a
19 right-of-way in the nature of an easement for the purpose of laying,
20 relaying, operating, and maintaining a pipeline in or across any of
21 the public lands except school lands which are not subject to
22 subsection (2) of this section, the title of which is vested in the
23 State of Nebraska, shall have the right to acquire the same for such
24 purpose by filing with the other governing body having title or
25 supervision thereof, a plat describing the portion or portions of

1 land, real estate, or right-of-way necessary for the laying,
2 relaying, operating, and maintaining of any such pipeline, and the
3 governing body shall direct the county board of the county or
4 counties through which such pipeline right-of-way is desired, shown
5 by the pipeline carrier's application and maps, to appraise and fix
6 the amount to be paid by the pipeline carrier for such right-of-way,
7 and assess the damages therefor. Before making the assessment, the
8 governing body shall notify the pipeline carrier of the time and
9 place of such hearing by either certified or registered mail, to be
10 mailed at least ten days prior to the hearing.

11 Sec. 9. Any person who willfully and maliciously breaks,
12 injures, damages, or otherwise interferes with any pipeline or any
13 portion of a pipeline owned, operated, or managed pursuant to the
14 Hazardous Liquid Pipeline Notification Act shall be guilty of a Class
15 III misdemeanor.

16 Sec. 10. The commission may adopt and promulgate rules
17 and regulations to carry out the Hazardous Liquid Pipeline
18 Notification Act.

19 Sec. 11. The commission may contract for professional
20 services and expert assistance, including, but not limited to, the
21 services of engineers, accountants, attorneys, and economists, to
22 assist reviewing applications under the Hazardous Liquid Pipeline
23 Notification Act.

24 Sec. 12. The Hazardous Liquid Pipeline Notification Act
25 does not apply to facilities owned, operated, or constructed by a

1 natural gas company as defined by section 2 of the federal Natural
2 Gas Act, 15 U.S.C. 717a.

3 Sec. 13. 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 State
9 of Nebraska, or intrastate within the State of Nebraska, and desiring
10 or requiring a right-of-way or other interest in real estate, and
11 being unable to agree with the owner or lessee of any land, lot,
12 right-of-way, or other property for the amount of compensation for
13 the use and occupancy of so much of any lot, land, real estate,
14 right-of-way, or other property as may be reasonably necessary for
15 the laying, relaying, operation, and maintenance of any such pipeline
16 or the location of any plant or equipment necessary to operate such
17 pipeline, shall have the right to acquire the same for such purpose
18 through the exercise of the power of eminent domain. The procedure to
19 condemn property shall be exercised in the manner set forth in
20 sections 76-704 to 76-724.

21 Sec. 14. Section 57-1102, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 57-1102 Any ~~such~~ person, company, corporation, or
24 association, in the laying, relaying, operation, and maintenance of
25 any ~~such~~ pipeline under section 57-1101 within the State of Nebraska,

1 shall have the right to enter upon and cross, with such pipeline, any
2 public road or highway, under such reasonable regulations and
3 restrictions as may be prescribed by the Department of Roads, if it
4 is a state or federal highway, or by the county board of each county,
5 as to all other public roads and highways within such county, and
6 shall also have the right to lay, relay, operate, and maintain such
7 pipeline in and along any public road or highway.

8 Sec. 15. Section 57-1103, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 57-1103 Any person engaged in, and any company,
11 corporation, or association formed or created for the purpose of
12 transporting or conveying ~~crude oil, petroleum, or other products~~
13 ~~thereof, gases~~ in interstate commerce through, or across the State of
14 Nebraska, or intrastate within the State of Nebraska, and desiring or
15 requiring a right-of-way in the nature of an easement, for the
16 purpose of laying, relaying, operating, and maintaining any pipeline
17 or lines for such purpose in or across any of the public lands except
18 school lands which are not subject to ~~the provisions of section~~
19 57-1102, the title of which is vested in the State of Nebraska, shall
20 have the right to acquire the same for such purpose by filing with
21 the other governing body having title or supervision thereof, a plat
22 describing the portion or portions of land, real estate, or right-of-
23 way necessary for the laying, relaying, operating, and maintaining of
24 any such pipeline. ~~The , and the~~ governing body shall direct the
25 county ~~commissioners board~~ of the county or counties through which

1 such pipeline right-of-way is desired, shown by petitioners'
2 application and maps, to appraise and fix the amount to be paid by
3 such person, company, corporation, or association for such right-of-
4 way, and assess the damages therefor. Before making the assessment,
5 the governing body shall notify the applicant of the time and place
6 of such hearing by either certified or registered mail, to be mailed
7 at least ten days prior to the hearing.

8 Sec. 16. Section 57-1104, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 57-1104 Any party objecting to such allowance may, within
11 thirty days from the entering of the award, appeal to the district
12 court of the county in which such lands are situated by entering into
13 an undertaking to the State of Nebraska, to be approved by the Board
14 of Educational Lands and Funds or governing body, in such sum as the
15 board shall specify, conditioned (1) that the appellant shall
16 prosecute such appeal to effect without unnecessary delay, and (2)
17 that if judgment ~~be~~is rendered against such appellant, ~~he~~the
18 appellant will satisfy such judgment. Within ten days from the filing
19 of such bond, the board or governing body shall make a certified
20 transcript of such proceedings with the board or governing body and
21 transmit the same to the district court of the county in which such
22 lands are situated, where the ~~same~~appeal shall be heard before the
23 court as a proceeding in equity.

24 Sec. 17. Section 57-1105, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 57-1105 Upon the determination of the amount by the Board
2 of Educational Lands and Funds or governing body, the applicant shall
3 pay the amount to the treasurer of the county in which such lands are
4 situated, for the use of the permanent school fund of this state, if
5 such lands are school lands; as to other public lands such payment
6 shall be made to the State Treasurer for the use of the board or
7 other governing body having title or supervision over such lands.
8 Upon making ~~said~~ the payment, the applicant shall be vested with the
9 right to lay, relay, operate, and maintain ~~such~~ the pipeline through
10 the lands described in the proceedings, notwithstanding any appeal as
11 taken or authorized by section 57-1104. Upon appeal the district
12 court shall determine only the amount of the award and not whether a
13 right-of-way is granted.

14 Sec. 18. Section 57-1106, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 57-1106 Any person who ~~shall~~ willfully and maliciously
17 ~~break, injure, damage, or otherwise interfere~~ breaks, injures,
18 damages, or otherwise interferes with, any ~~such~~ pipeline, plant, or
19 equipment of any ~~such~~ person, company, corporation, or association,
20 operating in compliance with sections 57-1101 to 57-1105 shall be
21 guilty of a Class III misdemeanor.

22 Sec. 19. If any section in this act or any part of any
23 section is declared invalid or unconstitutional, the declaration
24 shall not affect the validity or constitutionality of the remaining
25 portions.

1 Sec. 20. Original sections 57-1101, 57-1102, 57-1103,
2 57-1104, 57-1105, and 57-1106, Reissue Revised Statutes of Nebraska,
3 are repealed.

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