

LEGISLATIVE BILL 4

Approved by the Governor November 22, 2011

Introduced by Langemeier, 23; Haar, 21.

FOR AN ACT relating to oil pipelines; to amend sections 73-307, 73-507, and 81-1701, Reissue Revised Statutes of Nebraska; to state findings and intent; to provide powers and duties for the Department of Environmental Quality and the Governor relating to supplemental environmental impact statements; to provide for applicability of statutes; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. The Legislature finds that:

(1) The State of Nebraska is responsible for protecting its natural resources, agricultural resources, aesthetics, economy, and communities through reasonable regulation for the common good and welfare. As such, the state is responsible for ensuring that an oil pipeline proposed to be located within, through, or across Nebraska is in compliance with all state laws, rules, and regulations relating to water, air, and wildlife under the Constitution of Nebraska and state law;

(2) Public policy should reflect this responsibility while simultaneously recognizing the necessity for energy use and the economic benefits to Nebraska of transporting oil within, through, or across the state, the need for economic development in Nebraska, and the opportunities for jobs and revenue that new development brings to the state;

(3) The United States has the important ability to work with foreign suppliers of crude oil to meet our overall energy needs and to further our national security interests; and

(4) The economic benefits of oil pipeline construction projects are important to the state, including the creation of jobs. Nevertheless, the benefits of any proposed oil pipeline project must be weighed against any concerns brought by the residents of Nebraska.

Sec. 2. For purposes of sections 1 to 3 of this act:

(1) Department means the Department of Environmental Quality;

(2) Oil pipeline means a pipeline which is larger than eight inches in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines; and

(3) Pipeline carrier means an individual, a company, a corporation, an association, or any other legal entity that engages in owning, operating, or managing an oil pipeline.

Sec. 3. (1) The department may collaborate with a federal agency or agencies in a review under the National Environmental Policy Act involving a supplemental environmental impact statement for oil pipeline projects within, through, or across the state. Prior to entering into such shared jurisdiction and authority with a federal agency or agencies, the department shall enter into a memorandum of understanding with such federal agency or agencies that sets forth the responsibilities and schedules that will lead to an effective and timely review under the National Environmental Policy Act involving a supplemental environmental impact statement.

(2) Since the objectives of the process are to ensure adequate information gathering, full and careful agency and public review, objective preparation of a supplemental environmental impact statement, adherence to a defined schedule, and an appropriate role for a pipeline carrier which avoids the appearance of conflicts of interest, it is the intent of the Legislature that the state fully fund the process of preparation of a supplemental environmental impact statement and that no fees will be required of an applicant. The department may contract with outside vendors in the process of preparation of a supplemental environmental impact statement. The department shall make every reasonable effort to ensure that each vendor has no conflict of interest or relationship to any pipeline carrier that applies for an oil pipeline permit.

(3) In order for the process to be efficient and expeditious, the department's contracts with vendors pursuant to this section for a supplemental environmental impact statement shall not be subject to the Nebraska Consultants' Competitive Negotiation Act or sections 73-301 to 73-306 or 73-501 to 73-509.

(4) After the supplemental environmental impact statement is

prepared, the department shall submit it to the Governor. Within thirty days after receipt of the supplemental environmental impact statement from the department, the Governor shall indicate, in writing, to the federal agency or agencies involved in the review as to whether he or she approves any of the routes reviewed in the supplemental environmental impact statement.

Sec. 4. Section 73-307, Reissue Revised Statutes of Nebraska, is amended to read:

73-307 Sections 73-301 to 73-306 shall not apply to the Nebraska Consultants' Competitive Negotiation Act or section 3 of this act.

Sections 73-301 to 73-306 shall not be construed to apply to renewals of contracts already approved pursuant to or not subject to such sections, to amendments to such contracts, or to renewals of such amendments unless the amendments would directly cause or result in the replacement by the private entity of additional permanent state employees or positions greater than the replacement caused by the original contract.

Sec. 5. Section 73-507, Reissue Revised Statutes of Nebraska, is amended to read:

73-507 (1) Subject to review by the Director of Administrative Services, the materiel division shall provide procedures to grant limited exceptions from the provisions of sections 73-504, 73-508, and 73-509 for:

(a) Sole source and emergency contracts; and

(b) Other circumstances or specific contracts when any of the requirements of sections 73-504, 73-508, and 73-509 are not appropriate for or are not compatible with the circumstances or contract. The materiel division shall provide a written rationale which shall be kept on file when granting an exception under this subdivision.

(2) The following types of contracts for services are not subject to sections 73-504, 73-508, and 73-509:

(a) Contracts for services subject to the Nebraska Consultants' Competitive Negotiation Act;

(b) Contracts for services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;

(c) Contracts for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;

(d) Contracts involving state or federal financial assistance passed through by a state agency to a political subdivision;

(e) Contracts with direct providers of medical, behavioral, or developmental health services, child care, or child welfare services to an individual;

(f) Agreements for services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public;

(g) Agreements for services between a state agency and the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or other officers or agencies established by the Constitution of Nebraska;

(h) Department of Insurance contracts for financial or actuarial examination, for rehabilitation, conservation, reorganization, or liquidation of licensees, and for professional services related to residual pools or excess funds under the agency's control;

(i) Department of Roads contracts for all road and bridge projects; and

(j) Nebraska Investment Council contracts; and-

(k) Contracts under section 3 of this act.

Sec. 6. Section 81-1701, Reissue Revised Statutes of Nebraska, is amended to read:

81-1701 The purpose of sections 81-1701 to 81-1721 the Nebraska Consultants' Competitive Negotiation Act is to provide managerial control over competitive negotiations by the state for acquisition of professional architectural, engineering, landscape architecture, or land surveying services. The act does not apply to contracts under section 3 of this act.

Sec. 7. Original sections 73-307, 73-507, and 81-1701, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 8. Since an emergency exists, this act takes effect when passed and approved according to law.