Introduced by Wayne, 13.

Read first time January 18, 2017

Committee: Judiciary

A BILL FOR AN ACT relating to pipelines; to amend sections 57-1101, 57-1401, 57-1403, 57-1405, 73-307, 73-507, 75-502, 76-710.04, and 81-1701, Revised Statutes Cumulative Supplement, 2016; to change and eliminate provisions relating to eminent domain; to change provisions of the Major Oil Pipeline Siting Act; to provide, change, and eliminate provisions relating to the review and evaluation of pipeline routes; to harmonize provisions; to repeal the original sections; and to outright repeal sections 57-1501 to 57-1503, Revised Statutes Cumulative Supplement, 2016.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 57-1101, Revised Statutes Cumulative Supplement, 2016, is amended to read:

57-1101 Any person engaged in, and any company, corporation, or association formed or created for the purpose of, transporting or conveying crude oil, petroleum, gases, or other products thereof in interstate commerce through or across the State of Nebraska or intrastate within the State of Nebraska, and desiring or requiring a right-of-way or other interest in real estate and being unable to agree with the owner or lessee of any land, lot, right-of-way, or other property for the amount of compensation for the use and occupancy of so much of any lot, land, real estate, right-of-way, or other property as may be reasonably necessary for the laying, relaying, operation, and maintenance of any such pipeline or the location of any plant or equipment necessary to operate such pipeline, shall have the right to acquire the same for such purpose through the exercise of the power of eminent domain if there is a showing by a preponderance of the evidence that the pipeline is in the public interest, except that for any major oil pipeline as defined in section 57-1404 to be placed in operation in the State of Nebraska after November 23, 2011, any such person, company, corporation, or association shall comply with section 57-1503 and receive the approval of the Governor for the route of the pipeline under such section or shall apply for and receive an order approving the application under the Major Oil Pipeline Siting Act, prior to having the rights provided under this section. If condemnation procedures have not been commenced within two years after the date the Governor's approval is granted or after the date of receipt of an order approving an application under the Major Oil Pipeline Siting Act, the right under this section expires. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. For purposes of this section, public interest shall include, but not be limited to, whether the pipeline serves the general public of the State of Nebraska.
Sec. 2. Section 57-1401, Revised Statutes Cumulative Supplement, 2016, is amended to read:

57-1401  Sections 57-1401 to 57-1412 shall be known and may be cited as the Major Oil Pipeline Siting Act.

Sec. 3. Section 57-1403, Revised Statutes Cumulative Supplement, 2016, is amended to read:

57-1403 The Legislature finds that:

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

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

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

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

Sec. 4. Section 57-1405, Revised Statutes Cumulative Supplement, 2016, is amended to read:

57-1405 (1) If a pipeline carrier proposes to construct a major oil pipeline to be placed in operation in Nebraska after November 23, 2011, and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an
application with the commission and receive approval pursuant to section 57-1408 prior to beginning construction of the major oil pipeline within Nebraska. If a pipeline carrier proposes a substantive change to the route of a major oil pipeline and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an application for the proposed change with the commission and receive approval pursuant to section 57-1408 prior to beginning construction relating to the proposed change. The applicant shall also file a copy of the application with the agencies listed in subsection (3) of section 57-1407.

(2) The application shall be accompanied by written agreement to pay expenses assessed pursuant to section 57-1406 and written testimony and exhibits in support of the application. The application shall include:

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

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

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

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

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

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

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

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

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

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

(4) The applicant shall present proof of a construction and performance bond in an amount of at least one hundred million dollars as a condition for approval.

Sec. 5. Section 73-307, Revised Statutes Cumulative Supplement, 2016, is amended to read:

73-307 Sections 73-301 to 73-306 shall not apply to the Nebraska Consultants' Competitive Negotiation Act, or sections 39-2808 to 39-2823, or section 57-1503.

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. 6. Section 73-507, Revised Statutes Cumulative Supplement, 2016, is amended to read:

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

(a) Sole source contracts, emergency contracts, and contracts for services when the price has been established by the federal General Services Administration or competitively bid by another state or group of states, a group of states and any political subdivision of any other state, or a cooperative purchasing organization on behalf of a group of states; 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 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, 73-509, and 73-510:

(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 a value of fifteen million dollars or less 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 state 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.

(k) Contracts under section 57-1503.

Sec. 7. Section 75-502, Revised Statutes Cumulative Supplement, 2016, is amended to read:

75-502 Pipeline carriers which are declared common carriers under section 75-501, and pipeline carriers approved under the Major Oil Pipeline Siting Act, and pipeline carriers for which the Governor approves a route under section 57-1503 may store, transport, or convey any liquid or gas, or the products thereof, and make reasonable charges therefor, may lay down, construct, maintain, and operate pipelines, tanks, pump stations, connections, fixtures, storage plants, and such machinery, apparatus, devices, and arrangement as may be necessary to operate such pipes or pipelines between different points in this state, and may use and occupy such lands, rights-of-way, easements, franchises, buildings, and structures as may be necessary to construct and maintain them.

Sec. 8. Section 76-710.04, Revised Statutes Cumulative Supplement, 2016, is amended to read:

76-710.04 (1) A condemnor may not take property through the use of eminent domain under sections 76-704 to 76-724 if the taking is primarily for an economic development purpose.

(2) For purposes of this section, economic development purpose means taking property for subsequent use by a commercial for-profit enterprise or to increase tax revenue, tax base, employment, or general economic conditions.

(3) This section does not affect the use of eminent domain for:

(a) Public projects or private projects that make all or a major
portion of the property available for use by the general public or
aqueducts, pipelines, transmission lines, or similar projects that make
all or a major portion of the commodity transported by the project
available for use by the general public for use as a right-of-way,
aqueduct, pipeline, transmission line, or similar use;

(b) Removing harmful uses of property if such uses constitute an
immediate threat to public health and safety;

(c) Leasing property to a private person who occupies an incidental
part of public property or a public facility, such as a retail
establishment on the ground floor of a public building;

(d) Acquiring abandoned property;

(e) Clearing defective property title;

(f) Taking private property for use by a utility or railroad;

(g) Taking private property based upon a finding of blighted or
substandard conditions under the Community Development Law if the private
property is not agricultural land or horticultural land as defined in
section 77-1359; and

(h) Taking private property for a transmission line to serve a
privately developed facility generating electricity using wind, solar,
biomass, or landfill gas. Nothing in this subdivision shall be construed
to grant the power of eminent domain to a private entity.

Sec. 9. Section 81-1701, Revised Statutes Cumulative Supplement,
2016, is amended to read:

81-1701 The purpose of 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 (1) contracts under section 57-1503, (2) contracts
under subsection (4) of section 39-1349, or (2) (3) contracts under
sections 39-2808 to 39-2823 except as provided in section 39-2810.

Sec. 10. Original sections 57-1101, 57-1401, 57-1403, 57-1405,
Sec. 11. The following sections are outright repealed: Sections 57-1501, 57-1502, and 57-1503, Revised Statutes Cumulative Supplement, 2016.