

**Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 14-0616.01 Jason Gelender x4330

**SENATE BILL 14-093**

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**SENATE SPONSORSHIP**

**Jahn,** Hodge, Tochtrop, Renfroe

**HOUSE SPONSORSHIP**

**May,** Priola, Williams

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**Senate Committees**

Agriculture, Natural Resources, & Energy

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING EQUIVALENT AUTHORITY FOR PIPELINE COMPANIES TO**  
102 **ACQUIRE RIGHT-OF-WAY.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

Article 5 of title 38, Colorado Revised Statutes, governs rights-of-way for transmission companies and grants the right of eminent domain to any domestic or foreign electric light power, gas, or pipeline company authorized to do business in Colorado for the purpose of obtaining rights-of-way for wires, pipes, regulator stations, substations,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

and systems needed to conduct its business. The bill specifies that, subject to state constitutional and statutory provisions that require payment of just compensation and otherwise govern the exercise of the power of eminent domain, companies that operate pipelines that convey oil, gasoline, or other petroleum or hydrocarbon products are pipeline companies granted the right of eminent domain. A pipeline company must also comply with all applicable laws and regulations including, but not limited to, federal pipeline safety regulations.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 38-5-101 as  
3 follows:

4 **38-5-101. Use of public highways - definitions.** Any domestic  
5 or foreign electric light power COMPANY, gas COMPANY, or pipeline  
6 company THAT IS authorized to do business under the laws of this state or  
7 any city or town ~~owning~~ THAT OWNS electric power producing or  
8 distribution facilities shall have the right to construct, maintain, and  
9 operate PIPELINES OR lines of electric light, wire, or power ~~or pipeline~~  
10 along, across, upon, and under any public highway in this state, subject  
11 to the provisions of this article AND           ALL APPLICABLE FEDERAL  
12 PIPELINE SAFETY REGULATIONS. Such PIPELINES OR lines of electric light,  
13 wire, or power ~~or pipeline shall~~ MUST be ~~so~~ constructed and maintained  
14 SO as not to obstruct or hinder the usual travel on ~~such~~ THE highway. AS  
15 USED IN THIS ARTICLE, "PIPELINE COMPANY" INCLUDES A COMPANY  
16 LAWFULLY FORMED UNDER THE LAWS OF THIS STATE OR OF ANY OTHER  
17 STATE THAT IS PERMITTED BY ITS ORGANIZATIONAL DOCUMENTS TO  
18 CONSTRUCT A PIPELINE FOR GAS, OIL, OR OTHER PETROLEUM OR  
19 HYDROCARBON PRODUCTS, AND "PERSON" HAS THE SAME MEANING AS SET  
20 FORTH IN SECTION 2-4-401 (8), C.R.S.

21 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-5-102 as

1 follows:

2 **38-5-102. Right-of-way across state land.** Any domestic or  
3 foreign electric light power COMPANY, gas COMPANY, or pipeline  
4 company authorized to do business under the laws of this state, or any city  
5 or town owning electric power producing or distribution facilities shall  
6 have the right to construct, maintain, and operate PIPELINES OR lines of  
7 electric light, wire, or power ~~or pipeline~~ and obtain permanent  
8 right-of-way therefor over, upon, under, and across all public lands  
9 owned by or under the control of the state upon the payment of such  
10 compensation and upon compliance with such reasonable conditions as  
11 ~~may be required by~~ the state board of land commissioners MAY REQUIRE.

12 **SECTION 3.** In Colorado Revised Statutes, **amend** 38-5-103 as  
13 follows:

14 **38-5-103. Power of companies to contract.** ~~Such~~ ANY FOREIGN  
15 OR DOMESTIC electric light power COMPANY, gas COMPANY, or pipeline  
16 company, or ~~such~~ ANY city or town shall have ~~power~~ THE RIGHT to  
17 contract with any person or corporation ~~the owner of~~ THAT OWNS any  
18 lands or any franchise, easement, or interest ~~therein~~ IN LANDS over or  
19 under which the PIPELINE OR THE line of electric light, wire, OR power ~~or~~  
20 ~~pipeline~~ is proposed to be laid or created for the right-of-way for the  
21 construction, maintenance, and operation of its electric light wires, pipes,  
22 poles, regulator stations, substations, or other property and for the  
23 erection, maintenance, occupation, and operation of offices at suitable  
24 distances for the public accommodation.

25 **SECTION 4.** In Colorado Revised Statutes, **amend** 38-5-104 as  
26 follows:

27 **38-5-104. Right-of-way across private lands.** (1) ~~Such~~ ANY

1 telegraph COMPANY, telephone COMPANY, electric light power COMPANY,  
2 gas COMPANY, or pipeline company, or ~~such~~ ANY city or town ~~shall be~~  
3 THAT OWNS ELECTRIC POWER PRODUCING OR DISTRIBUTION FACILITIES IS  
4 entitled to the right-of-way over or under the land, property, privileges,  
5 rights-of-way, and easements of other persons and corporations and to the  
6 right to erect its poles, wires, pipes, regulator stations, substations,  
7 systems, and offices upon GIVING NOTICE AND making just compensation  
8 ~~therefor~~ in the manner provided by law. The rights granted by this section  
9 and section 38-5-105 to ~~such~~ electric light power COMPANIES, gas  
10 COMPANIES, or pipeline companies, or to ~~such~~ cities and towns ~~shall~~ THAT  
11 OWN ELECTRIC POWER PRODUCING OR DISTRIBUTION FACILITIES DO not  
12 extend to the taking of any portion of the right-of-way of a railroad  
13 company, except to the extent of acquiring any necessary easement to  
14 cross the same or to serve ~~such~~ THE railroad company with electric light,  
15 power, or gas service. The rights granted by this section and section  
16 38-5-105 to telegraph or telephone companies ~~shall~~ DO not extend to the  
17 taking of any portion of the right-of-way of a railroad company, except  
18 to the extent of acquiring any easement ~~which~~ THAT does not materially  
19 interfere with the existing use by the railroad company, or except to the  
20 extent of acquiring any necessary easement to cross the same or to serve  
21 ~~such~~ THE railroad company with telegraph or telephone service.

22 (2) If ~~any right-of-way is taken by such~~ A telegraph COMPANY,  
23 telephone COMPANY, electric light power COMPANY, gas ~~or~~ COMPANY,  
24 pipeline company, city, or town TAKES RIGHT-OF-WAY over any portion  
25 of the right-of-way of a railroad company, the taking party shall pay the  
26 entire cost of constructing its facilities along ~~such~~ THE right-of-way,  
27 including any expenses incurred by the railroad for inspection and

1 flagging as reasonably necessary to avoid interference with safe operation  
2 of the railroad. The taking party shall also bear the entire cost, including  
3 the cost of ~~such~~ ANY inspection and flagging, of removing, relocating,  
4 altering, or protecting any facility installed on THE right-of-way so taken  
5 if, at any time, ~~such~~ THE removal, relocation, alteration, or protection  
6 becomes reasonably necessary to avoid interference with the railroad  
7 company's ability to use its original right-of-way to operate its railroad  
8 efficiently and safely and to efficiently and safely serve existing, new, or  
9 potential railroad customers. The taking party shall indemnify the railroad  
10 company from all losses and expenses resulting from the negligence of  
11 the taking party AND its successors or contractors in connection with or  
12 related to ~~such~~ THE right-of-way. ~~The~~ A taking party ~~shall have~~ HAS no  
13 claim against the railroad for any loss resulting from damage to the taking  
14 party's telegraph or telephone facilities resulting from any unforeseen  
15 emergencies or acts of God such as derailment, explosions, collisions, or  
16 activities reasonably performed in repairing damages caused by such  
17 occurrences.

18 **SECTION 5.** In Colorado Revised Statutes, **amend** 38-5-105 as  
19 follows:

20 **38-5-105. Companies, cities, and towns have eminent domain**  
21 **right.** ~~Such~~ A telegraph COMPANY, telephone COMPANY, electric light  
22 power COMPANY, gas COMPANY, or pipeline company, or ~~such~~ A city or  
23 town THAT OWNS ELECTRIC POWER PRODUCING OR DISTRIBUTION  
24 FACILITIES is vested with the power of eminent domain and authorized to  
25 proceed to obtain rights-of-way for poles, wires, pipes, regulator stations,  
26 substations, and systems for such purposes by means thereof. Whenever  
27 ANY such company or such city or town is unable to secure by deed,

1 contract, or agreement such rights-of-way for such purposes over, under,  
2 across, and upon the lands, property, privileges, rights-of-way, or  
3 easements of persons or corporations, it ~~shall be~~ IS lawful for such  
4 ~~telegraph, telephone, electric light power, gas, or pipeline company or any~~  
5 COMPANY, city, or town ~~owning electric power producing or distribution~~  
6 ~~facilities~~ to acquire such title in the manner ~~now~~ provided by law for the  
7 exercise of the right of eminent domain and in the manner as set forth in  
8 this article. SUCH COMPANY, CITY, OR TOWN EXERCISING THE RIGHT OF  
9 EMINENT DOMAIN PURSUANT TO THIS ARTICLE SHALL PROVIDE JUST  
10 COMPENSATION AS REQUIRED BY SECTION 15 OF ARTICLE II OF THE STATE  
11 CONSTITUTION.

12 **SECTION 6.** In Colorado Revised Statutes, **add 38-5-109 as**  
13 **follows:**

14 **38-5-109. Siting of pipelines that transport hazardous liquids**  
15 **- assistance of department of local affairs - definitions. (1) FOR**  
16 **PURPOSES OF THIS SECTION:**

17 (a) "HAZARDOUS LIQUIDS" MEANS:

18 (I) PETROLEUM OR A PETROLEUM PRODUCT;

19 (II) NONPETROLEUM FUEL, INCLUDING BIOFUEL, THAT IS  
20 FLAMMABLE, TOXIC, OR CORROSIVE OR WOULD BE HARMFUL TO THE  
21 ENVIRONMENT IF RELEASED IN SIGNIFICANT QUANTITIES; OR

22 (III) A SUBSTANCE THAT THE FEDERAL SECRETARY OF  
23 TRANSPORTATION DECIDES MAY POSE AN UNREASONABLE RISK TO LIFE OR  
24 PROPERTY WHEN TRANSPORTED BY A PIPELINE IN A LIQUID STATE, EXCEPT  
25 FOR LIQUEFIED NATURAL GAS.

26 (b) "PIPELINE" MEANS A PIPE WITH A NOMINAL DIAMETER OF SIX  
27 INCHES OR MORE THAT IS DESIGNED TO TRANSPORT HAZARDOUS LIQUIDS,

1 BUT DOES NOT INCLUDE A PIPE DESIGNED TO TRANSPORT A HAZARDOUS  
2 LIQUID BY GRAVITY OR A PIPE DESIGNED TO TRANSPORT OR STORE A  
3 HAZARDOUS LIQUID WITHIN A REFINING, STORAGE, OR MANUFACTURING  
4 FACILITY.

5 (2) IF A PIPELINE COMPANY OR ANY OTHER PERSON OR ENTITY  
6 SEEKS APPROVAL FOR SITING OF A PIPELINE, AND THE COUNTY OR  
7 MUNICIPALITY THAT HAS JURISDICTION OVER THE PROPOSED ROUTE DOES  
8 NOT HAVE THE FINANCIAL OR STAFF RESOURCES TO THOROUGHLY  
9 EVALUATE THE CURRENT AND FUTURE SAFETY RISKS OF SITING THE  
10 PIPELINE AS REQUESTED, THE COUNTY OR MUNICIPALITY SHALL SEEK  
11 PROFESSIONAL ASSISTANCE IN EVALUATING SUCH RISKS. THE PERSON OR  
12 ENTITY SEEKING APPROVAL FOR THE SITING OF THE PIPELINE SHALL PAY  
13 THE COSTS OF SUCH PROFESSIONAL ASSISTANCE. THE COUNTY OR  
14 MUNICIPALITY MAY REQUEST THAT THE DEPARTMENT OF LOCAL AFFAIRS  
15 HELP IT TO IDENTIFY PERSONS WHO CAN RENDER SUCH PROFESSIONAL  
16 ASSISTANCE. THE DEPARTMENT SHALL PROVIDE SUCH HELP TO ANY SUCH  
17 COUNTY OR MUNICIPALITY UPON REQUEST AND WITHIN ITS EXISTING  
18 APPROPRIATIONS. NO LATER THAN JULY 1, 2014, THE DEPARTMENT SHALL  
19 NOTIFY THE GOVERNING BODY OF EACH COUNTY AND MUNICIPALITY IN  
20 THIS STATE OF THE REQUIREMENTS OF THIS SUBSECTION (2).

21 **SECTION 7. Safety clause.** The general assembly hereby finds,  
22 determines, and declares that this act is necessary for the immediate  
23 preservation of the public peace, health, and safety.