

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 13-0847.01 Jason Gelender x4330

SENATE BILL 13-191

SENATE SPONSORSHIP

Hodge,

HOUSE SPONSORSHIP

Williams and Sonnenberg,

Senate Committees
Local Government

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ACQUISITION OF RIGHTS-OF-WAY BY PIPELINE**
102 **COMPANIES.**

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, C.R.S., 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, and systems needed to conduct its

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.*

SENATE
Amended 2nd Reading
April 12, 2013

business. The bill clarifies that, subject to state constitutional and statutory requirements 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.

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 - definition.** Any domestic or
5 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, ALL OTHER APPLICABLE STATUTORY AND
12 COMMON LAWS, AND ALL APPLICABLE REGULATIONS, INCLUDING, BUT NOT
13 LIMITED TO, FEDERAL PIPELINE SAFETY REGULATIONS. Such PIPELINES OR
14 lines of electric light, wire, or power ~~or pipeline shall~~ MUST be so
15 constructed and maintained SO as not to obstruct or hinder the usual travel
16 on ~~such~~ THE highway. AS USED IN THIS ARTICLE, "PIPELINE COMPANY"
17 INCLUDES A COMPANY LAWFULLY FORMED UNDER THE LAWS OF THIS
18 STATE OR OF ANY OTHER STATE THAT IS PERMITTED BY ITS
19 ORGANIZATIONAL DOCUMENTS TO CONSTRUCT A PIPELINE FOR GAS, OIL, OR
20 OTHER PETROLEUM OR HYDROCARBON PRODUCTS.

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 THAT OWNS
3 ELECTRIC POWER PRODUCING OR DISTRIBUTION FACILITIES shall be entitled
4 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 DO
11 not extend to the taking of any portion of the right-of-way of a railroad
12 company, except to the extent of acquiring any necessary easement to
13 cross the same or to serve ~~such~~ THE railroad company with electric light,
14 power, or gas service. The rights granted by this section and section
15 38-5-105 to telegraph or telephone companies shall DO not extend to the
16 taking of any portion of the right-of-way of a railroad company, except
17 to the extent of acquiring any easement ~~which~~ THAT does not materially
18 interfere with the existing use by the railroad company, or except to the
19 extent of acquiring any necessary easement to cross the same or to serve
20 ~~such~~ THE railroad company with telegraph or telephone service.

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

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

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

19 **38-5-105. Companies, cities, and towns have eminent domain**
20 **right.** ~~Such~~ A telegraph COMPANY, telephone COMPANY, electric light
21 power COMPANY, gas COMPANY, or pipeline company or ~~such~~ A city or
22 town is vested with the power of eminent domain and authorized to
23 proceed to obtain rights-of-way for poles, wires, pipes, regulator stations,
24 substations, and systems for such purposes by means thereof. Whenever
25 such company or such city or town is unable to secure by deed, contract,
26 or agreement such rights-of-way for such purposes over, under, across,
27 and upon the lands, property, privileges, rights-of-way, or easements of

1 persons or corporations, it shall be lawful for such telegraph, telephone,
2 electric light power, gas, or pipeline company or any SUCH COMPANY,
3 city, or town owning electric power producing or distribution facilities to
4 acquire such title in the manner now provided by law for the exercise of
5 the right of eminent domain and in the manner as set forth in this article.
6 SUCH COMPANY, CITY, OR TOWN EXERCISING THE RIGHT OF EMINENT
7 DOMAIN PURSUANT TO THIS ARTICLE SHALL PROVIDE JUST COMPENSATION
8 AS REQUIRED BY SECTION 15 OF ARTICLE II OF THE STATE CONSTITUTION
9 AND SHALL ABIDE BY THE NOTICE REQUIREMENTS AND ALL OTHER
10 REQUIREMENTS OF ARTICLE 1 OF THIS TITLE, WHERE APPLICABLE. IN ANY
11 CONDEMNATION ACTION PURSUANT TO THIS ARTICLE, IN DETERMINING
12 JUST COMPENSATION THE FINDER OF FACT MAY CONSIDER EVIDENCE OF
13 DAMAGE TO THE REMAINDER OF THE PROPERTY CAUSED BY THE
14 CONDEMNATION. SUCH EVIDENCE INCLUDES, BUT IS NOT LIMITED TO,
15 EVIDENCE OF LOST PROPERTY VALUE CAUSED BY PUBLIC HEALTH AND
16 SAFETY CONCERNS RELATED TO A PIPELINE.

17 **SECTION 6. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.