

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1017

Introduced by Krist, 10.

Read first time January 16, 2018

Committee:

1 A BILL FOR AN ACT relating to pipelines; to amend sections 57-1101,
2 57-1403, 57-1405, 73-307, 75-502, 76-710.04, and 81-1701, Revised
3 Statutes Cumulative Supplement, 2016, and section 73-507, Revised
4 Statutes Supplement, 2017; to change and eliminate provisions
5 relating to eminent domain; to define terms; to change provisions of
6 the Major Oil Pipeline Siting Act; to provide, change, and eliminate
7 provisions relating to the review and evaluation of pipeline routes;
8 to harmonize provisions; to repeal the original sections; and to
9 outright repeal sections 57-1501, 57-1502, and 57-1503, Revised
10 Statutes Cumulative Supplement, 2016.

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

1 Section 1. Section 57-1101, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 57-1101 (1) Any person engaged in, and any company, corporation, or
4 association formed or created for the purpose of, transporting or
5 conveying crude oil, petroleum, gases, or other products thereof in
6 interstate commerce through or across the State of Nebraska or intrastate
7 within the State of Nebraska, and desiring or requiring a right-of-way or
8 other interest in real estate and being unable to agree with the owner or
9 lessee of any land, lot, right-of-way, or other property for the amount
10 of compensation for the use and occupancy of so much of any lot, land,
11 real estate, right-of-way, or other property as may be reasonably
12 necessary for the laying, relaying, operation, and maintenance of any
13 such pipeline or the location of any plant or equipment necessary to
14 operate such pipeline, shall have the right to acquire the same for such
15 purpose through the exercise of the power of eminent domain if there is a
16 showing by a preponderance of the evidence that the pipeline is for a
17 public use and just compensation is provided, except that for any major
18 oil pipeline as defined in section 57-1404 to be placed in operation in
19 the State of Nebraska after November 23, 2011, any such person, company,
20 corporation, or association ~~shall comply with section 57-1503 and receive~~
21 ~~the approval of the Governor for the route of the pipeline under such~~
22 ~~section or shall apply for and receive an order approving the application~~
23 ~~under the Major Oil Pipeline Siting Act, prior to having the rights~~
24 ~~provided under this section. If condemnation procedures have not been~~
25 ~~commenced within two years after the date the Governor's approval is~~
26 ~~granted or after the date of receipt of an order approving an application~~
27 ~~under the Major Oil Pipeline Siting Act, the right under this section~~
28 ~~expires.~~

29 (2) The procedure to condemn property shall be exercised in the
30 manner set forth in sections 76-704 to 76-724.

31 (3) For purposes of this section:

1 (a) Just compensation includes compensation that takes into
2 consideration whether the taking of the property provides economic
3 benefit to a for-profit entity and, if so, the amount of such economic
4 benefit in comparison to the potential benefits and liabilities to the
5 property owner, affected political subdivisions, and members of the
6 public; and

7 (b) Public use means the provision of services directly to members
8 of the public and the transportation of a commodity with direct benefits
9 to members of the public.

10 Sec. 2. Section 57-1403, Revised Statutes Cumulative Supplement,
11 2016, is amended to read:

12 57-1403 The Legislature finds that:

13 (1) The right to own property is fundamental to the fabric of
14 American law and justice and both the Constitution of Nebraska and the
15 Constitution of the United States provide that private property cannot be
16 taken without due process and that such taking must be for a public use
17 with just compensation;

18 (2) ~~(1)~~ Nebraska has the authority as a sovereign state to protect
19 its land and natural resources for economic and aesthetic purposes for
20 the benefit of its residents and future generations by regulation through
21 approval or disapproval of major oil pipeline siting and the location of
22 routes, so long as it does not regulate in the area of safety as to the
23 design, installation, inspection, emergency plans and procedures,
24 testing, construction, extension, operation, replacement, and maintenance
25 of major oil pipelines and pipeline facilities;

26 (3) ~~(2)~~ The water and other natural resources in Nebraska will
27 become increasingly valuable, both economically and strategically, as the
28 demand for agricultural products for both food and fuel increases; and

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

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

4 Sec. 3. Section 57-1405, Revised Statutes Cumulative Supplement,
5 2016, is amended to read:

6 57-1405 (1) If a pipeline carrier proposes to construct a major oil
7 pipeline to be placed in operation in Nebraska after November 23, 2011,
8 and the pipeline carrier has submitted a route for an oil pipeline
9 within, through, or across Nebraska ~~but the route is not approved by the~~
10 ~~Governor pursuant to section 57-1503~~, the pipeline carrier shall file an
11 application with the commission and receive approval pursuant to section
12 57-1408 prior to beginning construction of the major oil pipeline within
13 Nebraska. If a pipeline carrier proposes a substantive change to the
14 route of a major oil pipeline and the pipeline carrier has submitted a
15 route for an oil pipeline within, through, or across Nebraska ~~but the~~
16 ~~route is not approved by the Governor pursuant to section 57-1503~~, the
17 pipeline carrier shall file an application for the proposed change with
18 the commission and receive approval pursuant to section 57-1408 prior to
19 beginning construction relating to the proposed change. The applicant
20 shall also file a copy of the application with the agencies listed in
21 subsection (3) of section 57-1407.

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

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

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

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

30 (d) A list of the governing bodies of the counties and
31 municipalities through which the proposed route of the major oil pipeline

1 would be located;

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

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

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

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

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

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

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

19 (5) The applicant shall provide a plan for periodic payments to
20 landowners for the use of their land that cover the term the pipeline is
21 being used. Such periodic payments shall reflect the economic benefit
22 received by the applicant as a result of obtaining a property interest in
23 such private property.

24 (6) The applicant shall provide a decommissioning plan that provides
25 for removal of the pipeline at the end of its useful life and restoration
26 of the property to its original state upon removal of the pipeline.

27 Sec. 4. Section 73-307, Revised Statutes Cumulative Supplement,
28 2016, is amended to read:

29 73-307 Sections 73-301 to 73-306 shall not apply to the Nebraska
30 Consultants' Competitive Negotiation Act, or sections 39-2808 to 39-2823,
31 ~~or section 57-1503.~~

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

8 Sec. 5. Section 73-507, Revised Statutes Supplement, 2017, is
9 amended to read:

10 73-507 (1) Subject to review by the Director of Administrative
11 Services, the division shall provide procedures to grant limited
12 exceptions from sections 73-504, 73-508, and 73-509 for:

13 (a) Sole source contracts, emergency contracts, and contracts for
14 services when the price has been established by the federal General
15 Services Administration or competitively bid by another state or group of
16 states, a group of states and any political subdivision of any other
17 state, or a cooperative purchasing organization on behalf of a group of
18 states; and

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

24 (2) The following types of contracts for services are not subject to
25 sections 73-504, 73-508, 73-509, and 73-510:

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

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

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

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

6 (e) Contracts with a value of fifteen million dollars or less with
7 direct providers of medical, behavioral, or developmental health
8 services, child care, or child welfare services to an individual;

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

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

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

21 (i) Department of Transportation contracts for all road and bridge
22 projects; and

23 (j) Nebraska Investment Council contracts. ~~;~~ and

24 ~~(k) Contracts under section 57-1503.~~

25 Sec. 6. Section 75-502, Revised Statutes Cumulative Supplement,
26 2016, is amended to read:

27 75-502 Pipeline carriers which are declared common carriers under
28 section 75-501, and pipeline carriers approved under the Major Oil
29 Pipeline Siting Act, ~~and pipeline carriers for which the Governor~~
30 ~~approves a route under section 57-1503~~ may store, transport, or convey
31 any liquid or gas, or the products thereof, and make reasonable charges

1 therefor, may lay down, construct, maintain, and operate pipelines,
2 tanks, pump stations, connections, fixtures, storage plants, and such
3 machinery, apparatus, devices, and arrangement as may be necessary to
4 operate such pipes or pipelines between different points in this state,
5 and may use and occupy such lands, rights-of-way, easements, franchises,
6 buildings, and structures as may be necessary to construct and maintain
7 them.

8 Sec. 7. Section 76-710.04, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 76-710.04 (1) A condemner may not take property through the use of
11 eminent domain under sections 76-704 to 76-724 if the taking is primarily
12 for an economic development purpose.

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

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

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

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

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

29 (d) Acquiring abandoned property;

30 (e) Clearing defective property title;

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

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

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

9 Sec. 8. Section 81-1701, Revised Statutes Cumulative Supplement,
10 2016, is amended to read:

11 81-1701 The purpose of the Nebraska Consultants' Competitive
12 Negotiation Act is to provide managerial control over competitive
13 negotiations by the state for acquisition of professional architectural,
14 engineering, landscape architecture, or land surveying services. The act
15 does not apply to (1) ~~contracts under section 57-1503,~~ (2) contracts
16 under subsection (4) of section 39-1349, or (2) ~~(3)~~ contracts under
17 sections 39-2808 to 39-2823 except as provided in section 39-2810.

18 Sec. 9. Original sections 57-1101, 57-1403, 57-1405, 73-307,
19 75-502, 76-710.04, and 81-1701, Revised Statutes Cumulative Supplement,
20 2016, and section 73-507, Revised Statutes Supplement, 2017, are
21 repealed.

22 Sec. 10. The following sections are outright repealed: Sections
23 57-1501, 57-1502, and 57-1503, Revised Statutes Cumulative Supplement,
24 2016.