

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 659**

Introduced by Wayne, 13.

Read first time January 18, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to pipelines; to amend sections 57-1101,  
2 57-1401, 57-1403, 57-1405, 73-307, 73-507, 75-502, 76-710.04, and  
3 81-1701, Revised Statutes Cumulative Supplement, 2016; to change and  
4 eliminate provisions relating to eminent domain; to change  
5 provisions of the Major Oil Pipeline Siting Act; to provide, change,  
6 and eliminate provisions relating to the review and evaluation of  
7 pipeline routes; to harmonize provisions; to repeal the original  
8 sections; and to outright repeal sections 57-1501 to 57-1503,  
9 Revised Statutes Cumulative Supplement, 2016.  
10 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 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 in the  
17 public interest, except that for any major oil pipeline as defined in  
18 section 57-1404 to be placed in operation in the State of Nebraska after  
19 November 23, 2011, any such person, company, corporation, or association  
20 ~~shall comply with section 57-1503 and receive the approval of the~~  
21 ~~Governor for the route of the pipeline under such section or shall apply~~  
22 ~~for and receive an order approving the application under the Major Oil~~  
23 ~~Pipeline Siting Act, prior to having the rights provided under this~~  
24 ~~section. If condemnation procedures have not been commenced within two~~  
25 ~~years after the date the Governor's approval is granted or after the date~~  
26 ~~of receipt of an order approving an application under the Major Oil~~  
27 ~~Pipeline Siting Act, the right under this section expires.~~ The procedure  
28 to condemn property shall be exercised in the manner set forth in  
29 sections 76-704 to 76-724. For purposes of this section, public interest  
30 shall include, but not be limited to, whether the pipeline serves the  
31 general public of the State of Nebraska.

1           Sec. 2. Section 57-1401, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3           57-1401 Sections 57-1401 to 57-1412 ~~57-1413~~ shall be known and may  
4 be cited as the Major Oil Pipeline Siting Act.

5           Sec. 3. Section 57-1403, Revised Statutes Cumulative Supplement,  
6 2016, is amended to read:

7           57-1403 The Legislature finds that:

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

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

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

22           (3) ~~(4)~~ The irrigation economy of Nebraska which relies on quality  
23 water adds over one billion dollars annually to net farm income and  
24 increases the gross state product by three billion dollars annually.

25           Sec. 4. Section 57-1405, Revised Statutes Cumulative Supplement,  
26 2016, is amended to read:

27           57-1405 (1) If a pipeline carrier proposes to construct a major oil  
28 pipeline to be placed in operation in Nebraska after November 23, 2011,  
29 and the pipeline carrier has submitted a route for an oil pipeline  
30 within, through, or across Nebraska ~~but the route is not approved by the~~  
31 ~~Governor pursuant to section 57-1503~~, the pipeline carrier shall file an

1 application with the commission and receive approval pursuant to section  
2 57-1408 prior to beginning construction of the major oil pipeline within  
3 Nebraska. If a pipeline carrier proposes a substantive change to the  
4 route of a major oil pipeline and the pipeline carrier has submitted a  
5 route for an oil pipeline within, through, or across Nebraska ~~but the~~  
6 ~~route is not approved by the Governor pursuant to section 57-1503,~~ the  
7 pipeline carrier shall file an application for the proposed change with  
8 the commission and receive approval pursuant to section 57-1408 prior to  
9 beginning construction relating to the proposed change. The applicant  
10 shall also file a copy of the application with the agencies listed in  
11 subsection (3) of section 57-1407.

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

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

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

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

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

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

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

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

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

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

31 (3) The applicant shall publish notice of the application in at

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

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

9 Sec. 5. Section 73-307, Revised Statutes Cumulative Supplement,  
10 2016, is amended to read:

11 73-307 Sections 73-301 to 73-306 shall not apply to the Nebraska  
12 Consultants' Competitive Negotiation Act, or sections 39-2808 to 39-2823,  
13 ~~or section 57-1503.~~

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

21 Sec. 6. Section 73-507, Revised Statutes Cumulative Supplement,  
22 2016, is amended to read:

23 73-507 (1) Subject to review by the Director of Administrative  
24 Services, the division shall provide procedures to grant limited  
25 exceptions from sections 73-504, 73-508, and 73-509 for:

26 (a) Sole source contracts, emergency contracts, and contracts for  
27 services when the price has been established by the federal General  
28 Services Administration or competitively bid by another state or group of  
29 states, a group of states and any political subdivision of any other  
30 state, or a cooperative purchasing organization on behalf of a group of  
31 states; and

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

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

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

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

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

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

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

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

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

30 (h) Department of Insurance contracts for financial or actuarial  
31 examination, for rehabilitation, conservation, reorganization, or

1 liquidation of licensees, and for professional services related to  
2 residual pools or excess funds under the agency's control;

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

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

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

7 Sec. 7. Section 75-502, Revised Statutes Cumulative Supplement,  
8 2016, is amended to read:

9 75-502 Pipeline carriers which are declared common carriers under  
10 section 75-501, and pipeline carriers approved under the Major Oil  
11 Pipeline Siting Act, ~~and pipeline carriers for which the Governor~~  
12 ~~approves a route under section 57-1503~~ may store, transport, or convey  
13 any liquid or gas, or the products thereof, and make reasonable charges  
14 therefor, may lay down, construct, maintain, and operate pipelines,  
15 tanks, pump stations, connections, fixtures, storage plants, and such  
16 machinery, apparatus, devices, and arrangement as may be necessary to  
17 operate such pipes or pipelines between different points in this state,  
18 and may use and occupy such lands, rights-of-way, easements, franchises,  
19 buildings, and structures as may be necessary to construct and maintain  
20 them.

21 Sec. 8. Section 76-710.04, Revised Statutes Cumulative Supplement,  
22 2016, is amended to read:

23 76-710.04 (1) A condemner may not take property through the use of  
24 eminent domain under sections 76-704 to 76-724 if the taking is primarily  
25 for an economic development purpose.

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

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

31 (a) Public projects or private projects that make all or a major

1 portion of the property available for use by the general public or  
2 aqueducts, pipelines, transmission lines, or similar projects that make  
3 all or a major portion of the commodity transported by the project  
4 available for use by the general public for use as a right-of-way,  
5 aqueduct, pipeline, transmission line, or similar use;

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

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

11 (d) Acquiring abandoned property;

12 (e) Clearing defective property title;

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

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

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

22 Sec. 9. Section 81-1701, Revised Statutes Cumulative Supplement,  
23 2016, is amended to read:

24 81-1701 The purpose of the Nebraska Consultants' Competitive  
25 Negotiation Act is to provide managerial control over competitive  
26 negotiations by the state for acquisition of professional architectural,  
27 engineering, landscape architecture, or land surveying services. The act  
28 does not apply to (1) ~~contracts under section 57-1503,~~ (2) contracts  
29 under subsection (4) of section 39-1349, or (2) ~~(3)~~ contracts under  
30 sections 39-2808 to 39-2823 except as provided in section 39-2810.

31 Sec. 10. Original sections 57-1101, 57-1401, 57-1403, 57-1405,

1 73-307, 73-507, 75-502, 76-710.04, and 81-1701, Revised Statutes  
2 Cumulative Supplement, 2016, are repealed.

3 Sec. 11. The following sections are outright repealed: Sections  
4 57-1501, 57-1502, and 57-1503, Revised Statutes Cumulative Supplement,  
5 2016.