

THE NEBRASKA LEGISLATURE'S  
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## UPDATE

## Two pipeline measures approved

Lawmakers gave final approval Nov. 22 to legislation providing a regulatory framework for siting oil pipelines in Nebraska and authorizing the state to work with the federal government to study the environmental impact of those pipelines.

Concern over the state's lack of oil pipeline regulation was sparked by TransCanada's proposed Keystone XL pipeline, which is intended to carry crude oil from Canada to Gulf Coast oil refineries. The pipeline's original 1,700-mile route would have traversed the Nebraska Sandhills.

Many landowners and environmentalists claimed the route posed an unacceptable threat to the Ogallala aquifer. Unions and others expressed concern that extensive state-level regulation at this stage of planning would derail the \$7 billion project or lead to costly legal action from TransCanada.

Gov. Dave Heineman issued the call Oct. 25 for a special session to consider legislation relating to oil pipelines and the 102nd Legislature, first special session began Nov. 1.

Of the six bills introduced, two measures authorizing substantive state-level oversight of oil pipelines were advanced from the Natural Resources Committee for debate by the full Legislature.

### Siting regulation

LB1, introduced by Fullerton Sen. Annette Dubas, creates the Major Oil Pipeline Siting Act. Among other provisions, the bill defines a major oil pipeline as one larger than six inches in diameter and establishes an application process for routing a major oil pipeline in Nebraska.

Dubas said the bill allows the state to impose conditions



The special session lasted 15 days and resulted in the passage of two bills regulating oil pipelines.

to ensure that pipelines serve the public interest while providing pipeline companies due process guarantees.

The intent language in LB1 specifies that safety considerations will not be included in determinations of public interest. States do not have jurisdiction to create pipeline standards involving safety issues, Dubas said, but can regulate siting for other reasons, including protection of land and natural resources for the economic and aesthetic benefit of residents.

"What I seek is what other states have," she said. "[This bill] is intended to deal solely with the issue of siting."

Under LB1, the Public Service Commission (PSC) is responsible for evaluating and approving pipeline siting applications, as well as holding public hearings to gather citizen input. An applicant will be assessed the cost of any public hearings and investigations relating to the application. In addition, an approved application will be required prior to a company being granted eminent domain rights.

An application to construct a major oil pipeline will be required to include a statement of the reasons for selecting a proposed route and evidence of consideration of alter-

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native routes, among other information.

A Natural Resources Committee amendment, adopted on general file, specified that LB1 does not apply to any major oil pipeline that has submitted an application to the U.S. Secretary of State prior to the bill's effective date.

The bill was further amended on select file to specify a 60-day time frame for the PSC to schedule a public hearing and to shorten the decision-making timeline from eight months to seven. In addition, the amendment changed the possible extension of the timeline from 18 months after a public hearing to 12 months after receipt of an application.

Dubas said several senators expressed concern about timelines in the original bill.

"Many comments were made about shortening the time frame of the application and the ultimate decision," she said. "I am very satisfied with the changes and the cooperative process we went through."

Sen. Kate Sullivan of Cedar Rapids supported the bill and the amendment, saying they would constitute a sound process for siting future oil pipelines.

"[LB1] simply puts in place a process that will be clear to everyone," she said. "It will work for everyone involved."

Columbus Sen. Paul Schumacher offered an amendment that would have permitted the state to lay, relay,



Sen. Annette Dubas

operate and maintain fiber optic cable in a major oil pipeline right-of-way. Schumacher said the state should reserve the right to use fiber optic cable in the future to protect pipelines from security threats.

Kearney Sen. Galen Hadley opposed the amendment, saying it would be a major change in state policy that should not be undertaken without a full public hearing on the issue.

The Schumacher amendment failed on a 2-27 vote.

Sen. Ken Haar of Malcolm introduced an amendment that would have defined the Sandhills region as an "avoidance area" where pipelines could be routed only if no reasonable alternative was available. He said the amendment was in response to public testimony given on the various bills introduced during the special session.

"The overwhelming message was that they wanted legislation that made

it clear that the Sandhills should be avoided," Haar said.

Sullivan opposed the Haar amendment, saying the application process outlined in LB1 and LB4 would provide sufficient protection for the Sandhills.

"I think that if we go forward with these two pieces of legislation, we can address your concerns," she said.

Haar withdrew the amendment.

Lincoln Sen. Bill Avery introduced, and later withdrew, an amendment that would have required applicants to disclose documents relating to the application process except those that otherwise lawfully could be withheld.

LB1 passed on a 48-0 vote.

## Environmental impact studies

Introduced by Schuyler Sen. Chris Langemeier, LB4 originally would have given pipeline siting authority to the governor.

During first-round debate on LB4, Norfolk Sen. Mike Flood announced that TransCanada had agreed to reroute the Keystone XL pipeline.

"They have agreed to voluntarily move the route out of the Sandhills," Flood said.

In addition, Flood said, the U.S. State Department confirmed that Nebraska has the ability to conduct a supplemental environmental impact study on any newly proposed route.

As a result, the Natural Resources Committee conducted a public hearing Nov. 15 on an amendment to authorize the state Department of Environmental Quality (DEQ) to collaborate with the federal government on a supplemental environmental impact study (EIS) for oil pipeline projects in Nebraska.

The amendment, offered by Flood,

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was adopted on a 44-0 vote during general file debate Nov. 16 and replaced the original provisions of LB4.

As amended, the bill applies to proposed pipelines larger than eight inches in inside diameter that are constructed or operated in Nebraska for the transportation of petroleum or petroleum components, products or wastes.

In preparing a supplemental EIS, the department is required to make every reasonable effort to ensure that no vendor has a conflict of interest or relationship to any pipeline carrier that applies for an oil pipeline permit. In addition, DEQ is authorized to contract with outside vendors and the state's competitive bidding requirements are waived.

"This was done to give DEQ the ability to perform such extensive undertakings in an expedited form," Flood said.

Flood said Nebraskans in the Sandhills had expressed concern about TransCanada paying for consultants involved in the federal study for the Keystone XL pipeline. To avoid any appearance of impropriety, he said, LB4 requires Nebraska to fully fund the state portion of the process and preparation of a supplemental EIS.

"I felt that you can remove a lot of that concern ... by having the state pay for it," Flood said. "If it's important enough to do on behalf of our citizens, it's important enough to pay for."

Scottsbluff Sen. John Harms agreed, saying he had concerns about TransCanada paying for the federal study. Nebraska citizens would want to be assured of transparency and objectivity in a supplemental study, he said.

"As a senator, I would want to own

that study," Harms said. "Whatever it costs is worth it for us and the taxpayers."

Sen. Danielle Conrad of Lincoln questioned the need to deviate from the traditional practice of having an applicant pay the fees required to carry out an evaluation process. She said a variety of models currently exist in state law requiring applicants to pay process fees, including rate cases before the Public Service Commission and assessing court costs to litigants.

Flood said obtaining reliable information through a process that Nebraskans can feel good about is important for the Keystone XL pipeline and for future projects as well.

"I think it has value—not just in this situation, but down the road," he said.

Furthermore, Flood said, participating in a supplemental study is optional under the bill, so the state would not be mandated to pay for such studies for all future proposed pipeline routes.

As amended, LB4 also requires the governor to indicate to the federal government in writing either approval or disapproval of the route outlined in the state's supplemental EIS within 30 days of receiving a report from DEQ.

"This is another line of defense for the citizens to make sure that their governor weighs in on a supplemental environmental impact study," Flood said.

Ogallala Sen. Ken Schilz supported the proposal, saying it would allow Nebraska to protect its environmental resources while still utilizing them for economic benefit through job creation and tax revenue.

"We all have to remember what is at stake," Schilz said.

LB4 passed on a 46-0 vote.

Senators also approved, on a 46-0 vote, a \$2 million appropriation from the general fund to DEQ to carry out the provisions of LB4.

## Other measures

During the special session, lawmakers also passed LB2, which appropriated funds for special session expenses. The bill passed 48-0.

Three legislative bills that were introduced received public hearings but were held in committee.

LB3, introduced by Lincoln Sen. Bill Avery, would require that companies, corporations or associations created for the purpose of transporting crude oil through the state be granted a federal or state permit prior to declaring eminent domain for purposes of acquiring land, lot, real estate right-of-way or other property for crude oil pipeline construction.

LB5, introduced by Haar, would prohibit a pipeline from traversing any portion of a geographic exclusion zone. The bill defined an exclusion zone as a geographical area in Nebraska in any part of a watershed that feeds directly or indirectly into a cold water class A stream or in which ground water depth is 10 feet or less below ground for a distance of 10 miles or more.

LB6, sponsored by Avery, would require a carrier authorized to build a pipeline in Nebraska to file a proof of indemnity bond of \$500 million with the secretary of state.

After passing LB1 and LB4, the Legislature adjourned sine die. The second session of the 102nd Legislature is scheduled to begin Jan. 4. ■

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