

ARTICLE 14

MAJOR OIL PIPELINE SITING ACT

57-1401 Act, how cited.

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

Source: Laws 2011, First Spec. Sess., LB1, § 2; Laws 2012, LB1161, § 2.

57-1402 Purposes of act.

(1) The purposes of the Major Oil Pipeline Siting Act are to:

(a) Ensure the welfare of Nebraskans, including protection of property rights, aesthetic values, and economic interests;

(b) Consider the lawful protection of Nebraska's natural resources in determining the location of routes of major oil pipelines within Nebraska;

(c) Ensure that a major oil pipeline is not constructed within Nebraska without receiving the approval of the commission under section 57-1408;

(d) Ensure that the location of routes for major oil pipelines is in compliance with Nebraska law; and

(e) Ensure that a coordinated and efficient method for the authorization of such construction is provided.

(2) Nothing in the Major Oil Pipeline Siting Act shall be construed to regulate any safety issue with respect to any aspect of any interstate oil pipeline. The Major Oil Pipeline Siting Act is intended to deal solely with the issue of siting or choosing the location of the route aside and apart from safety considerations. The Legislature acknowledges and respects the exclusive federal authority over safety issues established by the federal law, the Pipeline Safety Act of 1994, 49 U.S.C. 60101 et seq., and the express preemption provision stated in that act. The Major Oil Pipeline Siting Act is intended to exercise only the remaining sovereign powers and purposes of Nebraska which are not included in the category of safety regulation.

Source: Laws 2011, First Spec. Sess., LB1, § 3; Laws 2012, LB1161, § 4.

57-1403 Legislative findings.

The Legislature finds that:

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

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

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

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

Source: Laws 2011, First Spec. Sess., LB1, § 4.

57-1404 Terms, defined.

For purposes of the Major Oil Pipeline Siting Act:

(1) Commission means the Public Service Commission;

(2) Major oil pipeline means a pipeline which is larger than six inches in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines; and

(3) Pipeline carrier means a person that engages in owning, operating, or managing a major oil pipeline.

Source: Laws 2011, First Spec. Sess., LB1, § 5; Laws 2012, LB1161, § 5.

57-1405 Pipeline carrier; construction of major oil pipeline; application; substantive change to route; application; contents; notice.

(1) If a pipeline carrier proposes to construct a major oil pipeline to be placed in operation in Nebraska after November 23, 2011, and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an application with the commission and receive approval pursuant to section 57-1408 prior to beginning construction of the major oil pipeline within Nebraska. If a pipeline carrier proposes a substantive change to the route of a major oil pipeline and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an application for the proposed change with the commission and receive approval pursuant to section 57-1408 prior to beginning construction relating to the proposed change. The applicant shall also file a copy of the application with the agencies listed in subsection (3) of section 57-1407.

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

- (a) The name and address of the pipeline carrier;
- (b) A description of the nature and proposed route of the major oil pipeline and evidence of consideration of alternative routes;
- (c) A statement of the reasons for the selection of the proposed route of the major oil pipeline;
- (d) A list of the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located;
- (e) A description of the product or material to be transported through the major oil pipeline;
- (f) The person who will own the major oil pipeline;
- (g) The person who will manage the major oil pipeline;
- (h) A plan to comply with the Oil Pipeline Reclamation Act; and
- (i) A list of planned methods to minimize or mitigate the potential impacts of the major oil pipeline to land areas and connected natural resources other than with respect to oil spills.

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

Source: Laws 2011, First Spec. Sess., LB1, § 6; Laws 2012, LB1161, § 6.

57-1406 Commission; assess expenses; payment; neglect or refusal to pay; failure to file objection; notice of delinquency; collection.

(1) The commission shall assess the expenses reasonably attributable to investigation and hearing regarding an application filed under section 57-1405, including expenses billed by agencies filing reports as required in subsection (3) of section 57-1407 and both direct and indirect expenses incurred by the commission or its staff or consultants, to the applicant as agreed under section 57-1405.

(2) The commission shall ascertain the expenses of any such investigation and hearing and by order assess such expenses against the applicant and shall render a bill therefor, by United States mail, to the applicant, either at the time the order under section 57-1408 is issued or from time to time during such application process. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such applicant, within fifteen days after the mailing thereof, such applicant shall pay to the commission the amount of the assessment for which it is billed. The commission shall remit the payment to the State Treasurer for credit to the Public Service Commission Pipeline Regulation Fund. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year. The commission shall direct the State Treasurer to credit any reimbursement of expenses billed by agencies pursuant to subsection (3) of section 57-1407 to the appropriate fund of the appropriate agency.

(3) If any applicant against which an assessment has been made pursuant to this section, within fifteen days after the notice of such assessment, (a) neglects or refuses to pay the same or (b) fails to file objections to the assessment with the commission as provided in subsection (4) of this section, the commission shall transmit to the State Treasurer a certified copy of the notice of assessment, together with notice of neglect or refusal to pay the assessment, and on the same day the commission shall mail by registered mail to the applicant against which the assessment has been made a copy of the notice which it has transmitted to the State Treasurer. If any such applicant fails to pay such assessment to the State Treasurer within ten days after receipt of such notice and certified copy of such assessment, the assessment shall bear interest at the rate of fifteen percent per annum from and after the date on which the copy of the notice was mailed by registered mail to such applicant.

(4) Within fifteen days after the date of the mailing of any notice of assessment under subsection (2) of this section, the applicant against which such assessment has

been made may file with the commission objections setting out in detail the ground upon which the applicant regards such assessment to be excessive, erroneous, unlawful, or invalid. The commission shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment. An amended assessment shall have in all respects the same force and effect as though it were an original assessment.

(5) If any assessment against which objections have been filed is not paid within ten days after service of an order finding that such objections have been overruled and disallowed by the commission, the commission shall give notice of such delinquency to the State Treasurer and to the applicant in the manner provided for in subsection (3) of this section. The State Treasurer shall then collect the amount of such assessment. If an amended assessment is not paid within ten days after service of the order of the commission, the commission shall notify the State Treasurer and the applicant as in the case of delinquency in the payment of an original assessment. The State Treasurer shall then collect the amount of such assessment as provided in the case of an original assessment.

Source: Laws 2011, First Spec. Sess., LB1, § 7.

57-1407 Commission; duties; public meetings; agency reports; approval by commission; considerations.

- (1) After receipt of an application under section 57-1405, the commission shall:
 - (a) Within sixty days, schedule a public hearing;
 - (b) Notify the pipeline carrier of the time, place, and purpose of the public hearing;
 - (c) Publish a notice of the time, place, and purpose of the public hearing in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed; and
 - (d) Serve notice of the public hearing upon the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located as specified in subdivision (2)(d) of section 57-1405.
- (2) The commission may hold additional public meetings for the purpose of receiving input from the public at locations as close as practicable to the proposed route of the major oil pipeline. The commission shall make the public input part of the record.
- (3) If requested by the commission, the following agencies shall file a report with the commission, prior to the hearing on the application, regarding information within the respective agencies' area of expertise relating to the impact of the major oil pipeline on any area within the respective agencies' jurisdiction, including in such report opinions

regarding the advisability of approving, denying, or modifying the location of the proposed route of the major oil pipeline: The Department of Environmental Quality, the Department of Natural Resources, the Department of Revenue, the Department of Roads, the Game and Parks Commission, the Nebraska Oil and Gas Conservation Commission, the Nebraska State Historical Society, the State Fire Marshal, and the Board of Educational Lands and Funds. The agencies may submit a request for reimbursement of reasonable and necessary expenses incurred for any consultants hired pursuant to this subsection.

(4) An application under the Major Oil Pipeline Siting Act shall be approved if the proposed route of the major oil pipeline is determined by the Public Service Commission to be in the public interest. The pipeline carrier shall have the burden to establish that the proposed route of the major oil pipeline would serve the public interest. In determining whether the pipeline carrier has met its burden, the commission shall not evaluate safety considerations, including the risk or impact of spills or leaks from the major oil pipeline, but the commission shall evaluate:

(a) Whether the pipeline carrier has demonstrated compliance with all applicable state statutes, rules, and regulations and local ordinances;

(b) Evidence of the impact due to intrusion upon natural resources and not due to safety of the proposed route of the major oil pipeline to the natural resources of Nebraska, including evidence regarding the irreversible and irretrievable commitments of land areas and connected natural resources and the depletion of beneficial uses of the natural resources;

(c) Evidence of methods to minimize or mitigate the potential impacts of the major oil pipeline to natural resources;

(d) Evidence regarding the economic and social impacts of the major oil pipeline;

(e) Whether any other utility corridor exists that could feasibly and beneficially be used for the route of the major oil pipeline;

(f) The impact of the major oil pipeline on the orderly development of the area around the proposed route of the major oil pipeline;

(g) The reports of the agencies filed pursuant to subsection (3) of this section;
and

(h) The views of the governing bodies of the counties and municipalities in the area around the proposed route of the major oil pipeline.

Source: Laws 2011, First Spec. Sess., LB1, § 8.

57-1408 Commission order; findings; extension of time; status reports; notice of completion; denial of application; amended application; commission; duties.

(1) Within seven months after the receipt of the application under section 57-1405, the commission shall enter an order approving the application or denying the application. The commission shall include in the order the findings of the commission regarding the application and the reasons for approving or denying the application. The order approving the application shall state that the application is in the public interest and shall authorize the pipeline carrier to act under section 57-1101.

(2) The commission may, for just cause, extend the time for the entry of an order under subsection (1) of this section. The extension shall not exceed twelve months after the receipt of the application under section 57-1405 unless all parties agree to a longer extension, except that no extension shall extend more than eight months after the issuance of a presidential permit authorizing the construction of the major oil pipeline.

(3) If the commission approves the application, the pipeline carrier shall file a status report with the commission regarding the construction of the major oil pipeline every six months until the completion of the major oil pipeline within Nebraska. The pipeline carrier shall notify the commission of the completion of the major oil pipeline within Nebraska within thirty days after such completion.

(4) If the commission denies the application, the pipeline carrier may amend the denied application in accordance with the findings of the commission and submit the amended application within sixty days after the issuance of the order denying the application. Within sixty days after the receipt of the amended application, the commission shall enter an order approving or denying the amended application after making new findings under subsection (4) of section 57-1407.

Source: Laws 2011, First Spec. Sess., LB1, § 9.

57-1409 Appeal.

Any party aggrieved by a final order of the commission regarding an application or assessment under the Major Oil Pipeline Siting Act, including, but not limited to, a decision relating to the public interest, may appeal. The appeal shall be in accordance with section 75-136.

Source: Laws 2011, First Spec. Sess., LB1, § 10; Laws 2013, LB545, § 1.

57-1410 Rules and regulations.

The commission shall adopt and promulgate rules and regulations to carry out the Major Oil Pipeline Siting Act.

Source: Laws 2011, First Spec. Sess., LB1, § 11.

57-1411 Public Service Commission Pipeline Regulation Fund; created; use; investment.

The Public Service Commission Pipeline Regulation Fund is created. The fund shall be administered by the commission. The fund shall be used by the commission to carry out the Major Oil Pipeline Siting Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2011, First Spec. Sess., LB1, § 12.

57-1412 Commission; powers.

The commission may contract for professional services and expert assistance, including, but not limited to, the services of engineers, hydrogeologists, accountants, attorneys, and economists, to assist with reviewing applications under the Major Oil Pipeline Siting Act.

Source: Laws 2011, First Spec. Sess., LB1, § 13.

57-1413 Documents or records; not withheld from public.

The commission shall not withhold any documents or records relating to a major oil pipeline from the public unless the documents or records are of the type that can be withheld under section 84-712.05 or unless federal law provides otherwise.

Source: Laws 2012, LB1161, § 3.