

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1186

Introduced by Bostar, 29.

Read first time January 19, 2022

Committee: Natural Resources

1 A BILL FOR AN ACT relating to the Oil Pipeline Reclamation Act; to amend
2 sections 57-1405, 76-3301, 76-3302, 76-3303, 76-3304, 76-3305, and
3 76-3306, Reissue Revised Statutes of Nebraska; to rename the act; to
4 define and redefine terms; to restate legislative intent; to provide
5 reclamation duties for pipeline carriers; to provide for reversion
6 of an abandoned pipeline right-of-way; to provide for recovery of
7 costs; to create a fund; to provide duties for the Department of
8 Environment and Energy; to harmonize provisions; and to repeal the
9 original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 57-1405, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

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

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

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

27 (d) A list of the governing bodies of the counties and
28 municipalities through which the proposed route of the major oil pipeline
29 would be located;

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

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

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

3 (h) A plan to comply with the Hazardous Liquid Oil Pipeline
4 Reclamation Act; and

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

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

14 Sec. 2. Section 76-3301, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 76-3301 Sections 76-3301 to 76-3308 and sections 8 to 11 of this act
17 shall be known and may be cited as the Hazardous Liquid Oil Pipeline
18 Reclamation Act.

19 Sec. 3. Section 76-3302, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 76-3302 For purposes of the Hazardous Liquid Oil Pipeline
22 Reclamation Act:

23 (1) Abandoned pipeline means a pipeline (a) after it has been
24 permanently removed from service in accordance with the federal Pipeline
25 Safety Act, 49 U.S.C. 60101 et seq., if applicable, (b) that is not used
26 or operated for a period of two consecutive years, or (c) for which
27 construction has been commenced and work has ceased and has not in good
28 faith resumed for five years. The term does not include a pipeline or a
29 pipeline right-of-way transporting product, in use as a conduit for
30 communications or other commercial purpose, or actively maintained with a
31 reasonable anticipation of a future use;

1 (2) Hazardous liquid ~~(1) Oil~~ means petroleum of any kind or in any
2 form, including crude oil or any fraction of crude oil, and liquefied
3 carbon dioxide;

4 (3) ~~(2)~~ Pipeline carrier means a person that engages in owning,
5 operating, or managing a pipeline or part of a pipeline for the
6 transportation of hazardous liquids ~~oil~~ but does not include an entity
7 under the jurisdiction of the Nebraska Oil and Gas Conservation
8 Commission for in-field flow-lines and gathering lines;

9 (4) ~~(3)~~ Reclamation means restoration of the areas through which a
10 pipeline is constructed as close as reasonably practicable to the
11 condition, contour, and vegetation that existed prior to construction;
12 and

13 (5) ~~(4)~~ Reclamation costs include, but are not limited to, the costs
14 of restoration of real and personal property, the costs of restoration of
15 natural resources, the costs of rehabilitation of habitat or wildlife,
16 ~~and~~ the costs of revegetation, and the costs of mitigating the impacts of
17 an abandoned pipeline including, but not limited to, cleaning, cathodic
18 protection, plugging, grouting, segmenting, and removal.

19 Sec. 4. Section 76-3303, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 76-3303 (1) The purpose of the Hazardous Liquid ~~Oil~~ Pipeline
22 Reclamation Act is to ensure that a pipeline carrier which owns,
23 constructs, operates, or manages a pipeline through this state for the
24 transportation of hazardous liquids ~~oil~~ is financially responsible for
25 reclamation costs relating to the construction, operation, ~~and~~
26 management, or abandonment of the pipeline in this state as prescribed in
27 the Hazardous Liquid Pipeline Reclamation Act ~~act~~.

28 (2) It is the intent of the Legislature that proper reclamation is
29 accomplished as part of the ~~oil~~ pipeline construction or abandonment
30 process, including restoration of areas through which a pipeline is
31 constructed or abandoned as close as reasonably practicable to the

1 condition, contour, and vegetation that existed prior to construction or
2 abandonment, including stabilizing disturbed areas, establishing a
3 diverse plant environment of native grasses and forbs to create a safe
4 and stable landscape, restoring active cropland to its previous
5 productive capability, mitigating noxious weeds, and managing invasive
6 plants, unless otherwise agreed to by the landowner.

7 Sec. 5. Section 76-3304, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 76-3304 (1) A pipeline carrier owning, operating, or managing a
10 pipeline or part of a pipeline for the transportation of hazardous
11 liquids ~~oil~~ in this state shall be responsible for all reclamation costs
12 necessary as a result of constructing the pipeline as well as reclamation
13 costs resulting from operating or abandoning the pipeline, except to the
14 extent another party is determined to be responsible.

15 (2) The pipeline carrier shall commence reclamation of the area
16 through which a pipeline is constructed as soon as reasonably practicable
17 after backfill as provided in sections 76-3307 and 76-3308.

18 (3) A pipeline carrier's obligation for reclamation and maintenance
19 of the pipeline right-of-way shall continue until the pipeline is
20 permanently decommissioned or removed in accordance with the Hazardous
21 Liquid Pipeline Reclamation Act.

22 (4) A pipeline carrier operating in this state shall (a) comply with
23 any post-decommissioning reclamation requirements adopted by the local
24 governmental entities having jurisdiction over an abandoned pipeline and
25 (b) submit a decommissioning plan to the Department of Environment and
26 Energy obligating the pipeline carrier to bear all costs related to
27 mitigating the post-decommissioning reclamation costs of an abandoned
28 pipeline and requiring that the pipeline carrier establish a fund in
29 trust in an amount sufficient to ensure payment of reclamation costs for
30 an abandoned pipeline owned, operated, or managed by the pipeline
31 carrier. When a pipeline is abandoned, such sufficient trust fund amount

1 shall be paid by the pipeline carrier to the Department of Environment
2 and Energy to be used as provided in section 10 of this act for
3 reimbursement of reclamation costs.

4 Sec. 6. Section 76-3305, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 76-3305 Nothing in the Hazardous Liquid Oil Pipeline Reclamation Act
7 prohibits a state agency, county board, city council, or village board
8 from pursuing reclamation costs for the maintenance and repair of roads,
9 bridges, or other infrastructure related to the construction,
10 maintenance, ~~or~~ operation, or abandonment of a pipeline by a pipeline
11 carrier who is subject to the act.

12 Sec. 7. Section 76-3306, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 76-3306 The Hazardous Liquid Oil Pipeline Reclamation Act provides
15 the minimum standards to be met by a pipeline carrier. The act is not
16 meant to affect the obligations of a pipeline carrier provided for in a
17 negotiated agreement with a landowner and is not to affect the duties of
18 a pipeline carrier under applicable federal law or permits.

19 Sec. 8. (1) Within thirty days of abandonment of a pipeline, a
20 pipeline carrier shall provide written notice of abandonment to all
21 owners or holders of real estate in which the pipeline carrier owns a
22 right-of-way easement for the abandoned pipeline. The notice shall
23 include (a) the name and address of the pipeline carrier, (b) the name,
24 address, and contact information for the pipeline carrier's
25 representative, (c) the location of the easement, (d) the date of
26 pipeline abandonment, (e) a description of the right of the real estate
27 owners or holders to reclamation of the right-of-way following
28 abandonment, (f) a description of the right of the real estate owners or
29 holders to reversion of the right-of-way easement following abandonment,
30 (g) a description of reclamation options including, at a minimum,
31 abandonment in place, pipeline segmentation, pipeline capping, pipeline

1 grouting, and complete or partial removal of abandoned pipe and other
2 carrier equipment, and (h) a description of the right to consult on
3 reclamation options with an independent engineer paid for by the pipeline
4 carrier.

5 (2) Upon request by a real estate owner or holder described in this
6 section, a pipeline carrier shall:

7 (a) Within thirty days of such request, provide such real estate
8 owner or holder with a list of independent engineers qualified to provide
9 professional advice on reclamation options following pipeline
10 abandonment, together with a form agreement by which the pipeline carrier
11 will agree to pay for the reasonable cost of such engineer;

12 (b) Within sixty days of such request, enter into good faith
13 discussions to identify reclamation options following pipeline
14 abandonment; and

15 (c) Complete all reasonable reclamation activities chosen by the
16 real estate owner or holder within three years of such request.

17 (3) Upon completion of all reclamation activities, the pipeline
18 carrier shall execute and record a release of easement to revert its
19 right-of-way to the real estate owner or holder, and provide notice of
20 such recording to the real estate owner or holder.

21 (4) The real estate owner or holder shall provide reasonable access
22 to the pipeline carrier in order to carry out its responsibilities under
23 the Hazardous Liquid Pipeline Reclamation Act.

24 Sec. 9. (1) In the event a pipeline carrier for any reason fails to
25 comply fully with section 8 of this act, an owner or holder of real
26 estate whose property contains an abandoned pipeline may undertake
27 reclamation following abandonment and cause reversion of the pipeline
28 carrier's right-of-way easement in accordance with this section.

29 (2) To effect a reversion on nonuse of right-of-way, the real estate
30 owner or holder of purported fee title to such real estate shall serve
31 notice upon the owner of such right-of-way easement and, if filed of

1 record, successors in interest and upon any party in possession of the
2 real estate. The written notice shall (a) accurately describe the real
3 estate and easement in question, (b) set out the facts concerning
4 ownership of fee title, ownership of the right-of-way easement, and the
5 period of abandonment or nonuse, and (c) notify the parties that such
6 reversion shall be complete and final, and that the easement or other
7 right shall be forfeited unless the parties shall, within one hundred
8 twenty days after the completed service of notice, file an affidavit with
9 the county recorder of the county in which the real estate is located
10 disputing the facts contained in the notice.

11 (3) The notice shall be served in the same manner as an original
12 notice under the rules of civil procedure. If an affidavit disputing the
13 facts contained in the notice is not filed within one hundred twenty
14 days, the party serving the notice may file for record in the office of
15 the county recorder a copy of the notice with proofs of service attached
16 and endorsed, and when so recorded, the record shall be constructive
17 notice to all persons of the abandonment, reversion, and forfeiture of
18 such right-of-way.

19 (4) Upon reversion of the easement, the real estate owner or holder
20 may require the pipeline company to perform reasonable reclamation
21 activities chosen by the real estate owner or holder, or if the pipeline
22 carrier fails to perform such activities, the real estate owner or holder
23 may perform the reclamation activities and recover reclamation costs from
24 the pipeline carrier and its successors and assigns, or to the extent the
25 pipeline carrier does not pay such costs, from the Abandoned Pipeline
26 Cash Fund.

27 Sec. 10. The Abandoned Pipeline Cash Fund is created. The fund
28 shall be administered by the Department of Environment and Energy for use
29 in funding abandoned pipeline reclamation costs under the Hazardous
30 Liquid Pipeline Reclamation Act. The fund shall consist of amounts paid
31 by pipeline operators upon abandoning a pipeline as provided in section

1 76-3304 and collected by the department and remitted to the State
2 Treasurer for credit to the fund. A pipeline carrier may make application
3 to the department to seek reimbursement from the fund for reclamation
4 costs incurred under sections 8 and 9 of this act. A real estate owner or
5 holder may make application to the department to seek reimbursement from
6 the fund for reclamation costs incurred under section 9 of this act. Any
7 money in the fund available for investment shall be invested by the state
8 investment officer pursuant to the Nebraska Capital Expansion Act and the
9 Nebraska State Funds Investment Act.

10 Sec. 11. The Department of Environment and Energy shall adopt and
11 promulgate rules and regulations to carry out sections 8 to 10 of this
12 act.

13 Sec. 12. Original sections 57-1405, 76-3301, 76-3302, 76-3303,
14 76-3304, 76-3305, and 76-3306, Reissue Revised Statutes of Nebraska, are
15 repealed.