

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 14-0616.01 Jason Gelender x4330

SENATE BILL 14-093

SENATE SPONSORSHIP

Jahn, Hodge, Tochtrop, Renfroe

HOUSE SPONSORSHIP

May, Priola, Williams

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING EQUIVALENT AUTHORITY FOR PIPELINE COMPANIES TO**
102 **ACQUIRE RIGHT-OF-WAY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Article 5 of title 38, Colorado Revised Statutes, governs rights-of-way for transmission companies and grants the right of eminent domain to any domestic or foreign electric light power, gas, or pipeline company authorized to do business in Colorado for the purpose of obtaining rights-of-way for wires, pipes, regulator stations, substations,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
February 27, 2014

SENATE
Amended 2nd Reading
February 26, 2014

and systems needed to conduct its business. The bill specifies that, subject to state constitutional and statutory provisions that require payment of just compensation and otherwise govern the exercise of the power of eminent domain, companies that operate pipelines that convey oil, gasoline, or other petroleum or hydrocarbon products are pipeline companies granted the right of eminent domain. A pipeline company must also comply with all applicable laws and regulations including, but not limited to, federal pipeline safety regulations.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 38-5-101 as
3 follows:

4 **38-5-101. Use of public highways - definitions.** Any domestic
5 or foreign electric light power COMPANY, gas COMPANY, or pipeline
6 company THAT IS authorized to do business under the laws of this state or
7 any city or town ~~owning~~ THAT OWNS electric power producing or
8 distribution facilities shall have the right to construct, maintain, and
9 operate PIPELINES OR lines of electric light, wire, or power ~~or pipeline~~
10 along, across, upon, and under any public highway in this state, subject
11 to the provisions of this article AND ALL APPLICABLE FEDERAL
12 PIPELINE SAFETY REGULATIONS. Such PIPELINES OR lines of electric light,
13 wire, or power ~~or pipeline shall~~ MUST be ~~so~~ constructed and maintained
14 SO as not to obstruct or hinder the usual travel on ~~such~~ THE highway. AS
15 USED IN THIS ARTICLE, "PIPELINE COMPANY" INCLUDES A COMPANY
16 LAWFULLY FORMED UNDER THE LAWS OF THIS STATE OR OF ANY OTHER
17 STATE THAT IS PERMITTED BY ITS ORGANIZATIONAL DOCUMENTS TO
18 CONSTRUCT A PIPELINE FOR GAS, OIL, OR OTHER PETROLEUM OR
19 HYDROCARBON PRODUCTS, AND "PERSON" HAS THE SAME MEANING AS SET
20 FORTH IN SECTION 2-4-401 (8), C.R.S.

21 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-5-102 as

1 follows:

2 **38-5-102. Right-of-way across state land.** Any domestic or
3 foreign electric light power COMPANY, gas COMPANY, or pipeline
4 company authorized to do business under the laws of this state, or any city
5 or town owning electric power producing or distribution facilities shall
6 have the right to construct, maintain, and operate PIPELINES OR lines of
7 electric light, wire, or power ~~or pipeline~~ and obtain permanent
8 right-of-way therefor over, upon, under, and across all public lands
9 owned by or under the control of the state upon the payment of such
10 compensation and upon compliance with such reasonable conditions as
11 ~~may be required by~~ the state board of land commissioners MAY REQUIRE.

12 **SECTION 3.** In Colorado Revised Statutes, **amend** 38-5-103 as
13 follows:

14 **38-5-103. Power of companies to contract.** Such electric light
15 power COMPANY, gas COMPANY, or pipeline company, or such city or
16 town shall have ~~power~~ THE RIGHT to contract with any person or
17 corporation ~~the owner of~~ THAT OWNS any lands or any franchise,
18 easement, or interest ~~therein~~ IN LANDS over or under which the PIPELINE
19 OR THE line of electric light, wire, OR power ~~or pipeline~~ is proposed to be
20 laid or created for the right-of-way for the construction, maintenance, and
21 operation of its electric light wires, pipes, poles, regulator stations,
22 substations, or other property and for the erection, maintenance,
23 occupation, and operation of offices at suitable distances for the public
24 accommodation.

25 **SECTION 4.** In Colorado Revised Statutes, **amend** 38-5-104 as
26 follows:

27 **38-5-104. Right-of-way across private lands.** (1) Such telegraph

1 COMPANY, telephone COMPANY, electric light power COMPANY, gas
2 COMPANY, or pipeline company, or such city or town ~~shall be~~ IS entitled
3 to the right-of-way over or under the land, property, privileges,
4 rights-of-way, and easements of other persons and corporations and to the
5 right to erect its poles, wires, pipes, regulator stations, substations,
6 systems, and offices upon GIVING NOTICE AND making just compensation
7 ~~therefor~~ in the manner provided by law. The rights granted by this section
8 and section 38-5-105 to such electric light power COMPANIES, gas
9 COMPANIES, or pipeline companies, or to such cities and towns ~~shall~~ ==
10 DO not extend to the taking of any portion of the right-of-way of a
11 railroad company, except to the extent of acquiring any necessary
12 easement to cross the same or to serve ~~such~~ THE railroad company with
13 electric light, power, or gas service. The rights granted by this section and
14 section 38-5-105 to telegraph or telephone companies ~~shall~~ DO not extend
15 to the taking of any portion of the right-of-way of a railroad company,
16 except to the extent of acquiring any easement ~~which~~ THAT does not
17 materially interfere with the existing use by the railroad company, or
18 except to the extent of acquiring any necessary easement to cross the
19 same or to serve ~~such~~ THE railroad company with telegraph or telephone
20 service.

21 (2) If ~~any right-of-way is taken by~~ such telegraph COMPANY,
22 telephone COMPANY, electric light power COMPANY, gas ~~or~~ COMPANY,
23 pipeline company, city, or town TAKES RIGHT-OF-WAY over any portion
24 of the right-of-way of a railroad company, the taking party shall pay the
25 entire cost of constructing its facilities along ~~such~~ THE right-of-way,
26 including any expenses incurred by the railroad for inspection and
27 flagging as reasonably necessary to avoid interference with safe operation

1 of the railroad. The taking party shall also bear the entire cost, including
2 the cost of ~~such~~ ANY inspection and flagging, of removing, relocating,
3 altering, or protecting any facility installed on THE right-of-way so taken
4 if, at any time, ~~such~~ THE removal, relocation, alteration, or protection
5 becomes reasonably necessary to avoid interference with the railroad
6 company's ability to use its original right-of-way to operate its railroad
7 efficiently and safely and to efficiently and safely serve existing, new, or
8 potential railroad customers. The taking party shall indemnify the railroad
9 company from all losses and expenses resulting from the negligence of
10 the taking party AND its successors or contractors in connection with or
11 related to ~~such~~ THE right-of-way. ~~The~~ A taking party ~~shall have~~ HAS no
12 claim against the railroad for any loss resulting from damage to the taking
13 party's telegraph or telephone facilities resulting from any unforeseen
14 emergencies or acts of God such as derailment, explosions, collisions, or
15 activities reasonably performed in repairing damages caused by such
16 occurrences.

17 **SECTION 5.** In Colorado Revised Statutes, **amend** 38-5-105 as
18 follows:

19 **38-5-105. Companies, cities, and towns have eminent domain**
20 **right.** Such telegraph COMPANY, telephone COMPANY, electric light power
21 COMPANY, gas COMPANY, or pipeline company, or such city or town is
22 vested with the power of eminent domain and authorized to proceed to
23 obtain rights-of-way for poles, wires, pipes, regulator stations,
24 substations, and systems for such purposes by means thereof. Whenever
25 ANY such company or such city or town is unable to secure by deed,
26 contract, or agreement such rights-of-way for such purposes over, under,
27 across, and upon the lands, property, privileges, rights-of-way, or

1 easements of persons or corporations, it ~~shall be~~ IS lawful for such
2 telegraph, telephone, electric light power, gas, or pipeline company or any
3 city or town owning electric power producing or distribution facilities to
4 acquire such title in the manner ~~now~~ provided by law for the exercise of
5 the right of eminent domain and in the manner ~~as~~ set forth in this article.
6 SUCH COMPANY, CITY, OR TOWN EXERCISING THE RIGHT OF EMINENT
7 DOMAIN PURSUANT TO THIS ARTICLE SHALL PROVIDE JUST COMPENSATION
8 AS REQUIRED BY SECTION 15 OF ARTICLE II OF THE STATE CONSTITUTION.

9 **SECTION 6.** In Colorado Revised Statutes, **add 38-5-109** as
10 follows:

11 **38-5-109. Siting of pipelines that transport hazardous liquids**
12 **- assistance of department of local affairs - definitions.** (1) FOR
13 PURPOSES OF THIS SECTION:

- 14 (a) "HAZARDOUS LIQUIDS" MEANS:
15 (I) PETROLEUM OR A PETROLEUM PRODUCT;
16 (II) NONPETROLEUM FUEL, INCLUDING BIOFUEL, THAT IS
17 FLAMMABLE, TOXIC, OR CORROSIVE OR WOULD BE HARMFUL TO THE
18 ENVIRONMENT IF RELEASED IN SIGNIFICANT QUANTITIES; OR
19 (III) A SUBSTANCE THAT THE FEDERAL SECRETARY OF
20 TRANSPORTATION DECIDES MAY POSE AN UNREASONABLE RISK TO LIFE OR
21 PROPERTY WHEN TRANSPORTED BY A PIPELINE IN A LIQUID STATE, EXCEPT
22 FOR LIQUEFIED NATURAL GAS.

23 (b) "PIPELINE" MEANS A PIPE WITH A NOMINAL DIAMETER OF SIX
24 INCHES OR MORE THAT IS DESIGNED TO TRANSPORT HAZARDOUS LIQUIDS,
25 BUT DOES NOT INCLUDE A PIPE DESIGNED TO TRANSPORT A HAZARDOUS
26 LIQUID BY GRAVITY OR A PIPE DESIGNED TO TRANSPORT OR STORE A
27 HAZARDOUS LIQUID WITHIN A REFINING, STORAGE, OR MANUFACTURING

1 FACILITY.

2 (2) IF A PIPELINE COMPANY OR ANY OTHER PERSON OR ENTITY
3 SEEKS APPROVAL FOR SITING OF A PIPELINE, AND THE COUNTY OR
4 MUNICIPALITY THAT HAS JURISDICTION OVER THE PROPOSED ROUTE DOES
5 NOT HAVE THE FINANCIAL OR STAFF RESOURCES TO THOROUGHLY
6 EVALUATE THE CURRENT AND FUTURE SAFETY RISKS OF SITING THE
7 PIPELINE AS REQUESTED, THE COUNTY OR MUNICIPALITY SHALL SEEK
8 PROFESSIONAL ASSISTANCE IN EVALUATING SUCH RISKS. THE PERSON OR
9 ENTITY SEEKING APPROVAL FOR THE SITING OF THE PIPELINE SHALL PAY
10 THE COSTS OF SUCH PROFESSIONAL ASSISTANCE. THE COUNTY OR
11 MUNICIPALITY MAY REQUEST THAT THE DEPARTMENT OF LOCAL AFFAIRS
12 HELP IT TO IDENTIFY PERSONS WHO CAN RENDER SUCH PROFESSIONAL
13 ASSISTANCE. THE DEPARTMENT SHALL PROVIDE SUCH HELP TO ANY SUCH
14 COUNTY OR MUNICIPALITY UPON REQUEST AND WITHIN ITS EXISTING
15 APPROPRIATIONS. NO LATER THAN JULY 1, 2014, THE DEPARTMENT SHALL
16 NOTIFY THE GOVERNING BODY OF EACH COUNTY AND MUNICIPALITY IN
17 THIS STATE OF THE REQUIREMENTS OF THIS SUBSECTION (2).

18 **SECTION 7. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.