

NO FISCAL IMPACT**Drafting Number:** LLS 13-0224**Date:** January 17, 2013**Prime Sponsor(s):** Sen. Hodge**Bill Status:** Senate Local Government**Fiscal Analyst:** Alex Schatz (303-866-4375)

TITLE: CONCERNING TECHNICAL REVISIONS TO ARTICLE 5 OF TITLE 38, COLORADO REVISED STATUTES, THAT REAFFIRM THAT THE PROVISIONS OF THAT ARTICLE RELATING TO RIGHTS-OF-WAY FOR TRANSMISSION COMPANIES APPLY TO PIPELINE COMPANIES OPERATING PIPELINES THAT CONVEY PETROLEUM AND HYDROCARBON PRODUCTS.

Summary of Legislation

This bill clarifies that pipeline companies that convey oil, gasoline, or other petroleum products may acquire rights-of-way by eminent domain. The bill is intended to override the May 2012 Colorado Supreme Court decision in the case of *Larson v. Sinclair Transportation Company*, which held that only pipeline companies in the business of transmitting electricity or natural gas can use the power of eminent domain in Article 5, Title 38, C.R.S., specifically Section 38-5-105, C.R.S. The bill takes effect upon signature of the governor, or upon becoming law without his signature.

Background

Section 38-5-105, C.R.S., originally enacted in 1907, vested a "pipeline company" with eminent domain power. Given their putative authority to obtain rights-of-way through eminent domain, pipeline companies conveying petroleum products have historically negotiated for right-of-way acquisition and routinely prepared condemnation petitions where those negotiations failed to obtain critical rights-of-way. For example, the pipeline company in the *Larson* case sought to negotiate greater capacity through an existing gasoline pipeline, requiring modification of its easement; when negotiations failed with at least two owners, the company filed an eminent domain petition. As of the filing of the *Larson* case, industry practices in Colorado were also informed by various other cases and statutory provisions granting the power of eminent domain to pipeline companies, among others (*e.g.*, Sections 38-1-101.5 and 38-2-101, C.R.S.).

Assessment

The bill is assessed as having no fiscal impact. By reaffirming common practices prior to the May 2012 issuance of the Colorado Supreme Court holding in *Larson*, the bill is consistent with the status quo for governmental agencies unaffected by eminent domain activities initiated by petroleum pipeline companies since that time. No agencies submitted evidence that they are engaged in an eminent domain dispute with a petroleum pipeline company or have changed position financially or with respect to real estate management as a result of the May 2012 holding. Additionally, if SB 13-021 is enacted, the fiscal note finds that additional grounds for eminent domain proceedings by pipeline companies and the duration of litigation make it unlikely that governmental agencies will have any well developed reliance on the Colorado Supreme Court's holding in *Larson* by the effective date of the bill.

Technical Note

As drafted, the bill defines pipeline companies under Title 38, Article 5, as limited to companies formed to "construct a pipeline for gas, oil, or other petroleum or hydrocarbon products." The intent of the bill, however, according to the legislative declaration, is to "include such companies" in Title 38, Article 5. The fiscal note assumes that the bill does not eliminate eminent domain authority for electric and gas utility companies.

Lacking guidance regarding intent, the bill could be read to substitute petroleum pipelines for electric and gas utility pipelines. If condemnation authority were eliminated for electric and gas utilities, this could potentially cause significant increases in costs to plan, acquire, and operate municipal utilities, with further impacts on rate cases before the Public Utilities Commission, and could potentially increase costs to state and local governments as consumers of electricity and natural gas.

Departments Contacted

Agriculture
Counties
Municipalities
Law
Judicial Branch

Higher Education
Office of Information Technology
Natural Resources
Property Taxation

Local Affairs
Transportation
Personnel
Regulatory Agencies