

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0224.01 Jason Gelender x4330

SENATE BILL 13-021

SENATE SPONSORSHIP

Hodge,

HOUSE SPONSORSHIP

(None),

Senate Committees
Local Government

House Committees

A BILL FOR AN ACT

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

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>.)

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.

Article 5 of title 38, C.R.S., 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, and systems needed to conduct its business. Until May 2012, it was commonly understood that article 5 applied to and granted the right of eminent domain to all pipeline companies authorized to do business in Colorado, including companies operating pipelines that convey oil, gasoline, or other petroleum products.

In May 2012, the Colorado supreme court held that article 5 grants the right of eminent domain only for acquisition of rights-of-way for pipelines involved in delivering electric power or natural gas and not for pipelines that convey oil, gasoline, or other petroleum products. The bill reaffirms that article 5 grants the power of eminent domain to pipeline companies operating pipelines that convey petroleum products by defining the term "pipeline company" to include such companies and by making additional clarifying technical revisions.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) In enacting and amending the provisions of article 5 of title 38,
5 Colorado Revised Statutes, which governs rights-of-way for transmission
6 companies, the general assembly intended to cover and grant the power
7 of eminent domain to pipeline companies authorized to do business in
8 Colorado, including companies operating pipelines that convey oil,
9 gasoline, or other petroleum or hydrocarbon products.

10 (b) The Colorado supreme court misconstrued the intent of the
11 general assembly in enacting and amending article 5 of title 38, Colorado
12 Revised Statutes, when it held, in *Larson v. Sinclair Transportation*
13 *Company*, Case No. 09SC966 (May 21, 2012), that article 5 grants the
14 right of eminent domain only for the acquisition of rights-of-way for
15 pipelines involved in delivering electric power or natural gas and not for
16 pipelines that convey oil, gasoline, or other petroleum or hydrocarbon

1 products.

2 (c) It is the intent of the general assembly to override the *Larson*
3 decision and reaffirm that article 5 of title 38, Colorado Revised Statutes,
4 applies to and grants the right of eminent domain to pipeline companies
5 authorized to do business in Colorado, including companies operating
6 pipelines that convey oil, gasoline, or other petroleum or hydrocarbon
7 products, by defining the term "pipeline company" to include such
8 companies and by making additional clarifying technical revisions.

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

11 **38-5-101. Use of public highways - definition.** Any domestic or
12 foreign electric light power COMPANY, gas COMPANY, or pipeline
13 company THAT IS authorized to do business under the laws of this state or
14 any city or town ~~owning~~ THAT OWNS electric power producing or
15 distribution facilities shall have the right to construct, maintain, and
16 operate PIPELINES OR lines of electric light, wire, or power ~~or pipeline~~
17 along, across, upon, and under any public highway in this state, subject
18 to the provisions of this article. Such PIPELINES OR lines of electric light,
19 wire, or power ~~or pipeline shall~~ MUST be so constructed and maintained
20 SO as not to obstruct or hinder the usual travel on ~~such~~ THE highway. AS
21 USED IN THIS ARTICLE, "PIPELINE COMPANY" MEANS A COMPANY
22 LAWFULLY FORMED UNDER THE LAWS OF THIS STATE OR OF ANY OTHER
23 STATE THAT IS PERMITTED BY ITS ORGANIZATIONAL DOCUMENTS TO
24 CONSTRUCT A PIPELINE FOR GAS, OIL, OR OTHER PETROLEUM OR
25 HYDROCARBON PRODUCTS.

26 **SECTION 3.** In Colorado Revised Statutes, **amend** 38-5-102 as
27 follows:

1 **38-5-102. Right-of-way across state land.** Any domestic or
2 foreign electric light power COMPANY, gas COMPANY, or pipeline
3 company authorized to do business under the laws of this state, or any city
4 or town owning electric power producing or distribution facilities shall
5 have the right to construct, maintain, and operate PIPELINES OR lines of
6 electric light, wire, or power ~~or pipeline~~ and obtain permanent
7 right-of-way therefor over, upon, under, and across all public lands
8 owned by or under the control of the state upon the payment of such
9 compensation and upon compliance with such reasonable conditions as
10 ~~may be required by~~ the state board of land commissioners MAY REQUIRE.

11 **SECTION 4.** In Colorado Revised Statutes, **amend** 38-5-103 as
12 follows:

13 **38-5-103. Power of companies to contract.** ~~Such~~ ANY FOREIGN
14 OR DOMESTIC electric light power COMPANY, gas COMPANY, or pipeline
15 company or ~~such~~ ANY city or town shall have ~~power~~ THE RIGHT to
16 contract with any person or corporation ~~the owner of~~ THAT OWNS any
17 lands or any franchise, easement, or interest ~~therein~~ IN LANDS over or
18 under which the PIPELINE OR THE line of electric light, wire, OR power ~~or~~
19 ~~pipeline~~ is proposed to be laid or created for the right-of-way for the
20 construction, maintenance, and operation of its electric light wires, pipes,
21 poles, regulator stations, substations, or other property and for the
22 erection, maintenance, occupation, and operation of offices at suitable
23 distances for the public accommodation.

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

26 **38-5-104. Right-of-way across private lands.** (1) ~~Such~~ ANY
27 telegraph COMPANY, telephone COMPANY, electric light power COMPANY,

1 gas COMPANY, or pipeline company or ~~such~~ ANY city or town THAT OWNS
2 ELECTRIC POWER PRODUCING OR DISTRIBUTION FACILITIES shall be 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 making just compensation ~~therefor~~ in the
7 manner provided by law. The rights granted by this section and section
8 38-5-105 to ~~such~~ electric light power COMPANIES, gas COMPANIES, or
9 pipeline companies or to ~~such~~ cities and towns ~~shall~~ DO not extend to the
10 taking of any portion of the right-of-way of a railroad company, except
11 to the extent of acquiring any necessary easement to cross the same or to
12 serve ~~such~~ THE railroad company with electric light, power, or gas
13 service. The rights granted by this section and section 38-5-105 to
14 telegraph or telephone companies ~~shall~~ DO not extend to the taking of any
15 portion of the right-of-way of a railroad company, except to the extent of
16 acquiring any easement ~~which~~ THAT does not materially interfere with the
17 existing use by the railroad company, or except to the extent of acquiring
18 any necessary easement to cross the same or to serve ~~such~~ THE railroad
19 company with telegraph or telephone service.

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

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

16 **SECTION 6.** In Colorado Revised Statutes, **amend** 38-5-105 as
17 follows:

18 **38-5-105. Companies, cities, and towns have eminent domain**
19 **right.** ~~Such~~ A telegraph COMPANY, telephone COMPANY, electric light
20 power COMPANY, gas COMPANY, or pipeline company or ~~such~~ A city or
21 town is vested with the power of eminent domain and authorized to
22 proceed to obtain rights-of-way for poles, wires, pipes, regulator stations,
23 substations, and systems for such purposes by means thereof. Whenever
24 such company or such city or town is unable to secure by deed, contract,
25 or agreement such rights-of-way for such purposes over, under, across,
26 and upon the lands, property, privileges, rights-of-way, or easements of
27 persons or corporations, it ~~shall be~~ IS lawful for ~~such telegraph, telephone,~~

1 ~~electric light power, gas, or pipeline company or any~~ SUCH COMPANY,
2 city, or town ~~owning electric power producing or distribution facilities~~ to
3 acquire such title in the manner ~~now~~ provided by law for the exercise of
4 the right of eminent domain and in the manner ~~as~~ set forth in this article.

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