

Committee kills eminent domain oil bill at sponsor's request

Written by Marianne Goodland, State Capitol reporter

The more they heard, the less they liked.

That's how Democrats in the House Transportation and Energy Committee reacted to a bill that would have granted eminent domain and condemnation rights to oil pipeline companies. But the committee instead voted 12-1 last week to kill the bill, at the sponsor's request.

In the House, Senate Bill 13-191 picked up another sponsor: Rep. Jerry Sonnenberg (R-Sterling). Sonnenberg and co-sponsor Rep. Angela Williams (D-Denver) told the transportation committee that the bill was just a technical correction to a long-ago statute and would put back into law a common practice of allowing oil pipeline companies the right of eminent domain.

The bill continued to pick up opposition during its three-month-long trip through the General Assembly. The first was from the plaintiffs in a 2012 Colorado Supreme Court decision that SB 191 was designed to overturn.

Then it was representatives of irrigation ditch companies in northeastern Colorado that feared the oil companies would run roughshod over their ability to decide when and where ditch crossings would take place.

The major opposition in the April 25 hearing came from Colorado Counties, Inc., which represents the state's county commissioners. According to Weld County Commissioner Barbara Kirkmeyer, who testified on their behalf, the bill would grant oil companies eminent domain rights, and "that's what we're afraid of."

"We're no stranger to oil and gas," Kirkmeyer said, with 80 percent of the state's oil and gas in Weld County and 20,000 active wells. That activity represents a substantial part of Weld County's tax base.

As a result, Kirkmeyer said it took some by surprise at the CCI meeting when she asked them to

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oppose SB 191. Approximately 40 of Colorado's 65 counties were represented at the CCI meeting, and they voted unanimously to oppose the bill, she said.

"This infringes on private property rights," Kirkmeyer explained. And despite the Supreme Court ruling that said the pipeline companies did not have eminent domain rights, according to Kirkmeyer some companies are still threatening condemnation when they can't get their way on pipeline easements.

Kirkmeyer told the committee an oil pipeline company last June threatened a landowner and Weld County with condemnation after both refused to grant permission for a 12-inch line. The Supreme Court's ruling had taken place a month earlier.

It's not appropriate for oil and gas companies to have eminent domain, Kirkmeyer said, because they aren't utilities nor are they regulated like utilities. Kirkmeyer has had first-hand experience with a company attempting to put in pipelines on her property.

She said Suncor wanted to put in a 20-inch high-pressure gas line on her property, and despite being told to stay off her land, last year company representatives trespassed on her property to do a survey for that line. "That's the arrogance, bullying and intimidation tactics they use," she said. "It's not the right way to treat property owners."

The committee also heard from Donna and Ivar Larson, the plaintiffs in the Supreme Court case, who said they would not benefit from the bill's defeat. Their interests are on public safety, Donna Larson said. Pipelines are a proper way to transport hazardous materials, she said; the question is where to put them.

The Larson case involved an easement originally for a 1963 six-inch line near Johnstown. In subsequent years a housing development was built near the line, with the closest house 25 feet away. The second line, a 10-inch line that transports 3 million gallons of jet fuel per day, became the subject of the lawsuit when Sinclair sued for an additional easement.

That second line was put in 36 feet from the nearest home, despite a Sinclair brochure that said

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they would never build a line closer than 100 feet. The six-inch line has since been removed by court order.

Donna Larson told the committee that if they decide to pass SB 191, a permit should be required for pipeline sitings as a matter of public safety and could be granted either by the Public Utilities Commission, the Colorado Oil and Gas Conservation Commission or other public agency. The bill should also ensure that property owners receive just compensation for all the land affected by the pipeline, she said.

The pipeline companies brought in powerful support from former Speaker of the House Terrance Carroll, an attorney with Greenberg Traurig who represents the Colorado Petroleum Association. He called the bill a “battle of the comma,” a reference to supporters’ initial insistence that the bill was merely fixing a comma problem.

Carroll provided legislators with a history lesson on the statute in question, how punctuation in statutes should be interpreted and on the federal regulations regarding pipelines. He disagreed with testimony that said there was no regulation regarding federal pipelines, citing two federal agencies that he said are tasked with public safety for pipelines.

Carroll asked the committee to not let a few “bad negotiators” impact what should be a narrow fix to the problem.

Rep. Randy Fischer (D-Fort Collins) asked Carroll about whether federal regulations require a safe distance between pipelines and homes. Carroll called the current regulations, updated in 2011, an “apples and oranges” comparison to what happened in the Larson case.

He added that he did not believe pipelines would be built that close under the new regulations. He did not, however, say how many feet the regulations specify.

But questions from the committee’s Democrats began to show that they were uncomfortable with what they were hearing. “A discussion of punctuation doesn’t help with this bill,” Fischer said. “We’re creating an 800-pound gorilla. This [bill] creates a major change in statute,” not just

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a change to a comma, he told Carroll. Fischer later suggested the issue go to an interim legislative committee. "I'm afraid we are about to make sweeping changes in statute, and [I] would be interested in pursuing a regulatory framework."

Even committee Republicans who supported the bill questioned whether it was appropriate, including Rep. Perry Buck (R-Fort Collins) and Rep. Justin Everett (R-Grand Junction), who said he would vote for the bill and work on a fix when it reached the House floor.

"There are serious issues with this bill," said committee chair Rep. Max Tyler (D-Lakewood). "This gives eminent domain rights to the companies without any guardrails." Tyler proposed an amendment that put the eminent domain rights into the hands of the county commissioners or other affected municipalities rather than the pipeline companies.

The committee approved the amendment on a party-line 8-5 vote, and it produced an immediate response. Jep Seman, a lobbyist for the Colorado Petroleum Association, quietly spoke to Sonnenberg; moments later, Sonnenberg asked the committee to kill the bill.

Kirkmeyer said after the hearing that the oil pipeline companies would not want the local governments to have the power that the Tyler amendment granted. The Larsons told this reporter they got the outcome they hoped for and were very pleased with the bill's defeat.

In other action at the capitol:

The House this week is working through SB 252, the bill that requires certain rural electric co-ops to boost their use of renewable resources from 10 percent to 25 percent by 2020. The House changed the bill on April 25 with an amendment from Rep. Mike McLachlan (D-Durango) to reduce the bill's standard to 20 percent, which Sonnenberg called a step in the right direction and the first signs of compromise.

"But it's not enough," he said: the co-ops need both a lower standard and more time to accomplish it. Republicans attempted to reduce it further to 15 percent, but that amendment failed. The late evening debate also produced angry words on how much the bill would raise

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electric rates for co-op members.

This bill puts the “special interests” of solar ahead of “rural Colorado working families,” said an angry Rep. Mark Waller (R-Colorado Springs), the minority leader. Bill co-sponsor Rep. Crisanta Duran (D-Denver) responded that the price for renewables under the bill is contained within a clear 2 percent rate cap, a cap that has been in place since 2007.

And that brought Sonnenberg to the podium, shouting, “Quite frankly, we don’t need your damn help in rural Colorado!” to the applause of his Republican colleagues. “Please don’t tell me you know what’s best for rural Colorado,” he said. Sonnenberg then apologized for his language.

After an hour of debate, House leadership asked that the bill be laid over for another day, adding it to an already busy calendar that includes a final vote on the new school finance act. The final vote on that bill, SB 213, is scheduled for this week.

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