

Oil companies seeking eminent domain and condemnation rights

Written by Marianne Goodland
Tuesday, 26 March 2013 19:55 -

A legislative measure to grant eminent domain and condemnation rights to oil companies has finally made it out of its first committee, more than two months after beginning the process.

Senate Bill 13-191 survived a close vote in the Senate Local Government Committee on March 21, passing on a party-line 3-2 vote.

But the bill did not leave the local government committee unscathed. Two amendments were added to address concerns about the bill's impact on irrigation ditch companies and to protect private property rights.

As introduced, SB 191 would grant oil companies eminent domain and condemnation rights for rights-of-way for pipelines, rights that the companies have believed for decades they already had.

The bill stems from a 2012 Colorado Supreme Court decision, *Larson v. Sinclair Transportation*. The Court told Sinclair it never had eminent domain or condemnation rights under state law. Current law grants those rights to natural gas and electric companies that require rights of way for transmission purposes.

In the Larson case, Sinclair used its alleged condemnation rights to obtain an easement for a 10-inch pipeline that transports two million gallons of jet fuel per day from Wyoming to Denver International Airport. A lower court granted Sinclair's request, which was challenged by the landowners, Ivar and Donna Larson of Johnstown.

SB 191 is the second go-around this session to deal with the eminent domain issue. Its sponsor, Sen. Mary Hodge (D-Brighton) originally attempted to change the law through an earlier bill, SB 21, which was introduced on the first day of the 2013 session. That bill was scrapped not long after its first committee hearing, in part because it was written too narrowly to deal with some of the issues raised by Larson and other opponents.

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The first hearing for SB 191 took place earlier this month, and pulled in even more opposition, this time from irrigation ditch company representatives who feared that under SB 191 the oil companies could obtain rights-of-way for pipeline crossings during times when ditches are full of water. They also claimed the bill would supersede a court decision that made clear that the ditch companies could set requirements for pipeline crossings.

That almost happened in the March 21 hearing. Hodge asked the committee to approve an amendment that would make it clear that the law established under SB 191 would rank above any other judicial decisions. The committee, however, unanimously rejected that request. They did instead adopt an amendment requiring notice to the landowner prior to an eminent domain action. Another amendment says that a condemnation action must consider fair compensation for the landowner, damage to the property caused by condemnation and public health and safety.

It wasn't enough to satisfy Republicans on the committee. Sen. Vicki Marble (R-Fort Collins) called the amendments "making a bad bill worse." Ivar Larson said the bill as amended does not adequately address the safety concerns he has raised, both in public testimony and in written evidence sent to the committee.

SB 191 now goes to the full Senate for debate. But that isn't likely to take place until after April 1. The Senate this week begins working on the bill that sets the 2013-14 state budget, and that process will clear their calendar of all else for the entire week.

In other action at the state capitol:

Governor John Hickenlooper, little more than 12 hours after receiving word that his corrections chief had been shot to death, signed into law three gun control bills.

During a March 20 news conference on the death of Tom Clements, Hickenlooper said he would not be intimidated into delaying the signing. "My gut feeling, [and] the cabinet is good with this, we go forward with our work. It's the kind of thing Tom would understand and support. We will sign the bills and try to continue to move this state forward."

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The bills signed into law are:

House Bill 13-1224, which limits large-capacity ammunition magazines to 15 rounds; HB 1228, which requires those seeking to buy firearms to pay for the background checks conducted by the Colorado Bureau of Investigation; and HB 1229, which requires a background check for all firearms purchases and transfers.

Of those bills, the most controversial is HB 1224. Erie, Colorado magazine manufacturer Magpul threatened to leave the state if the bill was signed into law. Hickenlooper took the unusual step of issuing a signing statement with his approval of HB 1224.

The law “does make illegal any magazine manufactured or purchased after July 1, 2013, that is capable of accepting, or is designed to be readily converted to accept, more than 15 rounds of ammunition,” the statement explained. However, one of the concerns about HB 1224 is that it requires continuous possession of a magazine. Earlier this week, a group of women Republican legislators demonstrated how this could become illegal by passing around a magazine.

Hickenlooper said in the statement that a reasonable interpretation of the law would allow persons other than the magazine’s owner to handle the magazine under appropriate circumstances.

Hickenlooper said he also consulted with the Attorney General to ensure that the law would be construed narrowly to comply with the Second Amendment and the Due Process clause of the state and federal constitutions. He instructed the Colorado Department of Public Safety to issue technical guidelines to comply with those instructions.

March 19 was National Agriculture Day at the state capitol. The governor offered a proclamation in honor of the state’s agriculture industry, and legislators joined in the tribute with their own resolution of support.

The resolution, House Joint Resolution 13-1018, was sponsored by the body’s two most prominent farmers: fourth-generation producer Rep. Jerry Sonnenberg (R-Sterling) and Sen.

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Greg Brophy (R-Wray). The resolution noted that agriculture is the second largest industry in the state, supporting 173,000 jobs and bringing \$41 billion to the state's economy.

"It's hard work," Sonnenberg told fellow House members. "But it's a lifestyle and a life I wouldn't trade for anything and my kids wouldn't trade for anything." Agriculture struggles to be profitable, he said, and the average age of today's farmer in Colorado is now 58. The state is working to improve the profitability, through expanding exports and doing as much as possible to survive in these times of drought.

It's a diverse state for agriculture, Sonnenberg explained, from high mountain sheep and cattle grazing, to orchards and a new wine industry, and grains, cattle and vegetables from the Eastern Plains. Agriculture is leading the state out of the recession, he said.

Rep. Randy Fischer (D-Fort Collins), chair of the House Agriculture, Livestock and Natural Resources Committee, also mentioned the drought. Agriculture producers own 85 percent of the water rights in the state, and are stewards of those resources. His committee works to find ways to support agriculture and to make sure that future population needs don't drain water from the state's agriculture industry.

"Don't ever complain about a farmer or rancher with a full stomach," said Rep. Don Coram (R-Montrose).

"We enjoy the most abundant, safest and most affordable food supply in the history of mankind. You can thank in most cases, ag producers, for that luxury we have," Brophy told the Senate.

The day featured a gourmet lunch that drew long lines of legislators, staff and capitol visitors. The lunch was sponsored by the Colorado Agriculture Council, and included the second annual "Farm to Fork Culinary Competition," which featured entrees created by Denver-area chefs using Colorado products. The competition winner, Chef Bob Holloway of McCoy's restaurant, created an entrée using Colorado lamb and arugula.

The Ag Council also presented a check for \$78,000 to the Food Bank of the Rockies, which

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represented in-kind donations valued at \$35,000 in eggs, \$20,000 in wheat and \$6,000 in potatoes, as well as cash.

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