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Eminent domain pressure targeted

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State Sen. Bill Avery

LINCOLN — A Nebraska lawmaker is proposing criminal penalties for pipeline officials who pressure landowners with eminent domain before a pipeline gets the official green light.

State Sen. Bill Avery of Lincoln offered an amendment Tuesday to Legislative Bill 3 that would define such behavior as "false representation."

Under his proposal, a first offense would be a misdemeanor punishable by a year in prison and a \$1,000 fine.

A second or subsequent offenses would be a felony, with a penalty of up to five years in prison and a \$10,000 fine.

Avery offered the amendment to a bill that would bar pipeline companies from invoking eminent domain before getting federal or state permits.

Eminent domain refers to the power of governments to take private property for a public use with appropriate compensation. The power is granted to some private companies, such as utilities and railroads.

Avery told the Judiciary Committee the bill is needed to protect Nebraska landowners.

Current state law sets no limits on pipeline companies' use of eminent domain, said Omaha attorney [David Domina](#).

That allowed TransCanada to send out two rounds of letters pressuring landowners to sign easements allowing the controversial Keystone XL pipeline across their land.

The letters said that if landowners did not sign within 30 days, the company would use eminent domain to get the right to cross their land.

"This is unethical, this is deceitful and this is completely intolerable," Avery said.

But Robert Jones, the TransCanada vice president in charge of Keystone pipeline operations, argued that the bill would be unconstitutional special legislation.

He said it would delay a project that has undergone three years of federal reviews and would make it difficult to gain needed rights of way for pipelines.

Questions about eminent domain frequently arise when company representatives talk with landowners, Jones said.

"The worst thing to do is not say anything about it," he said.

TransCanada has obtained voluntary agreements with 91 percent of the Nebraska landowners in the proposed path of the Keystone XL pipeline, Jones said.

It has not attempted to exercise eminent domain with the remaining landowners. Jones said there is time yet to do so before construction would begin.

Among the holdouts are Susan and William Dunavan of York County, who told the committee they live in fear that TransCanada will start eminent domain proceedings any day.

On the other side, Ron Kaminski, a labor union representative from Omaha, said pipeline workers fear the Keystone XL project — and the jobs it would bring — will be stopped.

Sen. Brad Ashford of Omaha, the committee chairman, said he could not predict whether the committee will advance LB 3.

"We're going to take our time to sort through this and not knee-jerk it," he said.

The bill was the only one of the five special session bills not referred to the Natural Resources Committee, the majority of whose members are skeptical about pipeline regulation.

Limits on pipeline companies' use of eminent domain powers are included in LB 1, a measure that would create a state pipeline permitting process.

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