



## Neb. pipeline session begins without specific plan

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Ted Glick, policy director of the Chesapeake Climate Action Network, speaks against the proposed Keystone XL pipeline during a rally in Washington, D.C. in October. (AP Photo/Pablo Martinez Monsivais)

LINCOLN, Neb. — Nebraska lawmakers will face one of the most unusual legislative sessions in recent history when they return to Lincoln on Tuesday to address pipeline issues: Unlike every other special session in at least 10 years, there's no firm proposals from the governor and no consensus about what — if anything — needs to be done.

Gov. Dave Heineman surprised most lawmakers with his announcement that he would call a special session for legislation on oil pipelines. The governor had repeatedly said he opposed a special session because of the \$10,000-per-day cost, a lack of support in the one-house Legislature and his doubts about the state's authority over pipeline routes.

He said he isn't sure lawmakers will find a legal and constitutional way to move the route for the Keystone XL pipeline, but it's possible and a special session is worth the risk.

The Keystone XL would carry Canadian tar sands oil to Texas Gulf Coast refineries. Opponents have expressed concern about the damage an oil spill could do to the Ogallala aquifer, a vast underground water supply.

Heineman, a Republican, has said Democratic President Barack Obama's administration should deny the pipeline a permit unless developer TransCanada agrees to move the route, but the project's supporters are ready to oppose any change. They say a three-year State Department analysis found no major environmental threat from the pipeline, and its construction will create jobs.

Supporters also say the special session is an 11th hour attempt to deal with something the state should have handled long ago.

Several lawmakers said they will work to address opponents' concerns, but they couldn't offer any guarantee that they'd be able to find a workable solution.

"I don't think there's a clear consensus as far as the legislature's concerned," said Speaker Mike Flood, of Norfolk. "There's no agreement as to what the end result will be."

[Dave Domina](#), an Omaha attorney working behalf of pipeline opponent Bold Nebraska, said in a legal brief filed last week that the state could require companies to build additional pipelines within existing right-of-way easements, such as the path of the original Keystone pipeline that cuts through eastern Nebraska.

Representatives for pipeline operator TransCanada say they can't move the pipeline because the proposal is too far along in a federal review that began years ago. The company applied for a federal permit in 2008.

John McCollister, executive director of the Platte Institute, a right-leaning Nebraska think tank that has advocated for the Keystone XL, said any state law rerouting it would likely violate the U.S. constitution's commerce clause, which gives the federal government power to regulate international trade. He also said a law based on pipeline concerns would run afoul of the federal Hazardous Liquids Pipeline Safety Act, which places safety concerns in the hands of federal regulators.

McCollister said Nebraska should establish some siting rights related to pipelines, but nothing that would affect the Keystone XL.

[Domina](#) acknowledged the federal government has more power than the state on pipeline safety issues. But he said the state can shape a law based on land-use concerns or protecting natural resources.

"Nebraska has control of that," he said. "Nebraska can decide whether we should build pipelines down the middle of main street, down the middle of the interstate, and along the aquifer."

Omaha Sen. Heath Mello said he and other lawmakers were still trying to figure out how much power the state had over pipeline routes. Mello, a Democrat in the officially nonpartisan legislature, said he was shocked Heineman still had not presented a proposal of his own to address the problem.

"I wholeheartedly expect him to put something forward," Mello said. "This is unprecedented."

Heineman has said the session was designed to spur a discussion about the state's options in rerouting the line and regulating others in the future. He said he expects the session to end by Thanksgiving at the latest.

“I believe we need to make the effort,” he said when he called the special session. “I think Nebraskans will appreciate that. But it’s entirely possible at the end of the day we’ll have this conversation, and the Legislature may come to the conclusion we don’t have any legal and constitutional option.”

