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## Pipeline session is new territory

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Gov. Dave Heineman and some other state lawmakers say that it is possible that no laws will be passed during the special session.

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LINCOLN — As state lawmakers open an unprecedented special session Tuesday, one thing's for certain: Nothing is for certain.

The Nebraska Legislature will convene at 2 p.m. in a session that might extend to Thanksgiving.

The focus will be the controversial Keystone XL pipeline and whether a legal and constitutional way can be found to reroute the crude-oil project around Nebraska's ecologically sensitive Sand Hills to avoid oil leaks into groundwater and the Ogallala Aquifer.

Gov. Dave Heineman, who is among the state's elected officials calling for a new route, called senators back to Lincoln.

But, unlike previous special sessions, the Republican has not introduced his own bill — despite urging from some state senators, including some in his own party.

It's entirely possible, Heineman and some lawmakers say, that no laws will be passed.

That would be a novel conclusion, because special sessions are historically called to address an emergency situation, and something is usually done.

"I don't know what the bills are going to look like. I don't know what the content will be. We're headed into uncharted territory," said State Sen. Mike Flood of Norfolk, speaker of the Legislature.

Pipeline developer TransCanada Inc. issued legal opinions Monday from two law firms stating it would be unconstitutional for lawmakers to pass new state regulations now.

A three-year federal review of the project is just wrapping up, and any new state regulations would represent a "last-minute attempt" to kill the \$7 billion, 1,700-mile-long project, according to the Omaha law firm McGrath North Mullin & Kratz.

The firm said that TransCanada would seek a court injunction and that a legal battle would require expensive litigation and possibly "billions" of dollars of damages.

"We recommend that the senators judge the risk and expense of litigation for themselves," the 19-page memo said.

The New York-based law firm of Sidley Austin reached similar conclusions.

TransCanada's legal opinions come after Nebraska attorneys for two environmental groups stated last week that the Legislature could pass routing laws and that it has immunity from expensive court judgments. Those opinions, from attorneys Alan Peterson and [Dave Domina](#), urged senators to pass regulations now, before the U.S. State Department rules on the pipeline's permit — which is expected near the end of the year.

Alex Pourbaix, TransCanada's president of oil pipelines, said in a press release that he hoped the company legal opinion would "provide some balance and insights" for senators.

The new opinions come after the company launched a series of radio ads aimed at convincing Nebraskans that fears of pipeline leaks are exaggerated.

But Sen. Ken Haar of Malcolm, who first called for a special session on the pipeline, said the TransCanada memos were an attempt to "scare and bully" the Legislature into doing nothing.

"I think we have the best legal minds in the state working on this," Haar said.

The special session is expected to start slowly.

The first three days will be brief meetings to allow the introduction of bills. Public hearings on those bills won't begin until next week, and floor debate by all 49 senators might not begin until Nov. 14.

How many bills might be introduced remains somewhat of a mystery.

A proposal from Sen. Annette Dubas of Fullerton is expected to be introduced Tuesday. It would require a review by the Nebraska Public Service Commission. It is patterned after a Montana law that allows that state to alter routes of pipelines and electric transmission lines to protect landowners.

Haar said he might or might not introduce a tougher pipeline bill patterned after a North Dakota law.

Sen. Bill Avery of Lincoln said he's working on a couple of bills, including one that would require TransCanada to post a \$500 million performance bond to ensure that any leaks were cleaned up.

The company recently offered to post a \$100 million performance bond after meeting with Flood and other state senators. It was part of a package of extra safety measures to avoid harming groundwater.

Avery said his bill would ensure that the performance bond was sufficient, noting that a pipeline leak into Michigan's Kalamazoo River last year is expected to cost upward of \$600 million to clean up.

Sen. Chris Langemeier of Schuyler, chairman of the Legislature's Natural Resources Committee, said he is also preparing a routing bill to ensure that senators at least debate the issue.

Langemeier, during a conference call with reporters Monday, expressed skepticism that lawmakers can "thread the needle" and find a legal way to affect the Keystone XL at this late date.

He also said he counts only two of eight members on his committee, which deals with pipeline legislation, who currently favor such legislation.

Even if a bill were advanced, it would take votes of 33 of the 49 senators to pass a law that would go into effect immediately, which Langemeier called "a high hurdle."

"We're kind of at a deadlock to start with," he said.

But later in the day, he said he would draft a bill to ensure that the full Legislature gets a chance to debate the issue.

"I think it's important that, if we're down there, that we have a discussion," the senator said. "We're going to look at whatever comes and be optimistic that they can find a needle in the haystack."

In two other related developments:

» The Nebraska Democratic Party accused Sen. Deb Fischer, a Republican candidate for U.S. Senate, of avoiding a public stand on the pipeline issue. Fischer disputed that, pointing out that during the 2011 regular session she co-sponsored a bill to allow Nebraska regulation of pipelines. She said she cannot decide whether to support the bills in the special session until she sees them.

» South Dakota Gov. Dennis Daugaard said he will ask the Legislature in his state to "impose additional protections" on the Keystone XL pipeline, similar to concessions that Nebraska lawmakers recently won. Those include the performance bond, coating the pipeline in concrete and locating emergency response workers closer to the pipeline. "The squeaky Cornhusker wheel shouldn't get all the grease," Daugaard told the Argus-Leader.

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