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SENATE

REPORT
106–387

PIPELINE SAFETY IMPROVEMENT ACT OF 2000

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2438

AUGUST 25, 2000.—Ordered to be printed

Filed under authority of the order of the Senate of July 26, 2000

U.S. GOVERNMENT PRINTING OFFICE

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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106TH CONGRESS, 2d Session | SENATE | REPORT 106–387

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Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2438]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2438) "A bill to provide for enhanced safety, public awareness, and environmental protection in pipeline transportation, and for other purposes", having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of this legislation is to reauthorize and improve Federal pipeline safety programs governing natural gas and hazardous liquid pipelines and to reduce safety risks and enhance environmental protection associated with pipeline transportation. As reported, the bill would authorize appropriations for carrying out federal pipeline safety programs in the amounts of $26,000,000 for fiscal year (FY) 2001, $30,000,000 for FY 2002, and $30,000,000 for FY 2003. The bill also authorizes funding for grants to States to assist in pipeline safety activities in amounts up to $17 million for FY 2001, $20 million for FY 2002 and $20 million for FY 2003.

BACKGROUND AND NEEDS

The authorization for pipeline safety programs expires September 30, 2000. By delegation of the Secretary of the Department of Transportation (DOT) through the Research and Special Programs Administration (RSPA), the Office of Pipeline Safety (OPS) is charged with administering pipeline safety programs. Pipeline safety programs were previously authorized through the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, and the Accountable Pipeline Safety and Partnership Act of 1996.

OPS regulates the day-to-day safety of interstate pipelines, including the operation, maintenance, and emergency response procedures pertaining to gas and hazardous liquid pipeline systems and also conducts a pipeline research and development program. It oversees the transportation of natural gas to 60 million residential and commercial customers by more than 2,000 gas pipeline operators with more than 1.8 million miles of pipeline. OPS further oversees more than 200 hazardous liquid operators with more than 165,000 miles of pipelines that transport almost 60 percent of the crude oil and petroleum products used in the United States.

Pipelines are one of the safest modes of transportation in the United States. Among all modes—highway, rail, aviation, marine, and pipeline—fatalities from pipeline accidents represent less than 3/1000 of 1 percent of the total number of fatalities on an annual basis.

While pipeline transportation generally has a very safe record considering the volume of material transported, accidents do occur. According to RSPA 1999 statistics, six people lost their lives in interstate hazardous liquid and natural gas transmission pipeline accidents and 20 individuals lost their lives in natural gas distribution line accidents.

The statutes under which OPS operates provide for State assumption of all or part of the intrastate regulatory and enforcement responsibility through annual certifications and agreements. OPS is authorized to reimburse a State agency up to 50 percent of the actual cost of carrying out the State's pipeline safety program, including the cost of personnel and equipment. Each year, State pipeline safety programs inspect the facilities of more than 5,800 natural gas and 240 hazardous liquid pipeline operators. The States investigate and monitor an estimated one-third of the safety-related pipeline condition reports received by OPS. In addition to scheduled inspections, State inspectors work with OPS inspectors in comprehensive inspections of pipeline facilities and investigating public complaints against pipeline operators. States represent about 90 percent of the State/Federal inspector work force that oversees pipelines nationwide.

OPS investigates major pipeline accidents to determine whether violations of federal regulations occurred and whether revisions or additions to the regulations are needed. The National Transportation Safety Board (NTSB) investigates selected major pipeline accidents, determines the probable cause of the accidents it investigates, and issues safety recommendations to prevent their recurrence.

Most of OPS's programs are funded by offsetting collections from the pipeline industry in the form of user fees and from the Oil Spill Liability Trust Fund. Gas transmission and hazardous liquid pipeline operators pay a pro rata share of program costs based on total pipeline mileage. Fees on operators of liquefied natural gas facilities are assessed based on total storage capacity and the level of the assessment is determined by annual appropriations. Consequently, users would bear the cost of any higher authorization levels.

LEGISLATIVE HISTORY

The Commerce Committee held two hearings on pipeline safety during the 106th Congress. On March 13, 2000, a field hearing, chaired by Senator Gorton, was held in Bellingham, Washington, during which 18 witnesses provided information and expressed views on a fatal hazardous liquid pipeline accident that occurred in June 1999, in Bellingham.

On May 11, 2000, the full Committee held a hearing on the reauthorization of the Pipeline Safety Act, during which witnesses from RSPA, the DOT Office of the Inspector General (DOT–IG), NTSB, industry, and interested citizens and safety advocates testified. That hearing also provided witnesses a forum to discuss the three bills pending in the Senate to reauthorize the Pipeline Safety Act: S. 2004 introduced by Senator Murray and cosponsored by Senators Bayh, Gorton, Inouye, Lautenberg and Wyden; S. 2409 introduced by Senator Hollings at the Administration's request and cosponsored by Senators Mikulski and Sarbanes; and, S. 2438 introduced by Senator McCain and cosponsored by Senators Murray and Gorton.

In open executive session on June 15, 2000, the Committee approved without objection S. 2438 with an amendment in the nature of a substitute, and other amendments. Chairman McCain and Senator Gorton offered an amendment in the nature of a substitute that provided a variety of technical and substantive amendments and it was adopted by voice vote. Chairman McCain also offered an amendment to modify section 13(b) on operator assistance in investigations which was adopted by voice vote. During debate on that amendment, the members agreed to work to further clarify the provision as well as to work on modifying section 15, the Pipeline Safety Advisory Council Pilot Program, prior to floor consideration. Senator Kerry offered an amendment to section 8 adding several new provisions concerning violations of federal pipeline safety regulations which was adopted by voice vote. Two amendments were offered by Senator Brownback which were defeated by rollcall votes (see Rollcall Votes in Committee). Senator Wyden offered an amendment to section 7 concerning the public right-to-know provisions which was accepted by voice vote. Finally, Senator Breaux offered an amendment to section 5 on integrity management. That amendment was defeated by voice vote, although there was a discussion about trying to work out the provisions of the amendment in dispute prior to floor consideration of the bill.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 24, 2000.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2438, the Pipeline Safety Improvement Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are James O'Keeffe (for federal costs), Victoria Heid Hall (for the state and local impact), and Lauren Marks (for the private-sector impact).

Sincerely,

STEVEN LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2438—Pipeline Safety Improvement Act of 2000

Summary: S. 2438 would authorize appropriations for the Department of Transportation's (DOT's) Office of Pipeline Safety (OPS) for fiscal years 2001 through 2003 and would revise policies and procedures related to pipeline safety. It would direct DOT to issue and enforce new regulations and authorize a pilot program for state advisory councils on pipeline safety. The bill would allow OPS to use funds collected from fines and penalties to defray the cost of the pilot program, and such spending would not be subject to appropriation.

Other provisions would direct DOT's Bureau of Transportation Statistics to create a national database on pipeline safety and require DOT's Inspector General to prepare a report on fines and penalties assessed by OPS. Finally, the bill would require pipeline operators to implement a number of safety measures and would change the civil and criminal penalties for violating laws governing pipeline safety.

Assuming appropriation of the necessary amounts, CBO estimates that the net cost of implementing S. 2438 would be $31 million over the 2991–2005 period. That amount includes a net authorization of $26 million for OPS's pipeline safety programs and $5 million for activities at other agencies. Enacting S. 2438 would affect direct spending and receipts, so pay-as-you-go procedures would apply, but CBO estimates that such effects would not be significant.

S. 2438 contains both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs of those mandates would not exceed the annual thresholds established in UMRA. (The thresholds

are $55 million for intergovernmental mandates and $109 million for private-sector mandates in 2000, adjusted annually for inflation.)

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2438 is shown in the following table. For this estimate, CBO assumes that S. 2438 will be enacted near the start of fiscal year 2001 and that amounts authorized by this bill will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns. The cost of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1]					
Estimated Net Authorization Levels [2]	9	10	10	1	1
Estimated Outlays	5	8	10	6	2

[1] CBO expects that S. 2438 would increase revenues and direct spending, but we estimate that any such effects would not be significant.
[2] The amounts shown are the differences between the bill's authorized funding and fee collections for each year.

Basis of estimate: CBO estimates that implementing S. 2438 would cost a total of $31 million over the 2001–2005 period, assuming appropriation of the necessary amounts. That estimate includes net spending of $26 million for OPS activities, reflecting the difference between authorized appropriations of $143 million and authorized collections of $117 million from pipeline user fees over the five-year period. A total of $37 million has been appropriated for OPS activities for fiscal year 2000, of which $30 million is offset by pipeline user fees. Both spending and user fees would increase under S. 2438, but the spending levels authorized by the bill would continue to exceed the amounts collected from fees. The bill would authorize the appropriation of $43 million in 2001 and $50 million in each of the fiscal years 2002 and 2003, with corresponding user fees of $35 million and $41 million, respectively. Hence, CBO estimates that the bill would authorize a net appropriation of $8 million in 2001 and $9 million in each of the fiscal years 2002 and 2003.

While the amounts collected from pipeline user fees are classified as offsetting receipts, CBO estimates that this legislation would not affect direct spending because the level of collections would be contingent upon future appropriations. (Although S. 2438 would authorize future collections, the amounts of gross spending and offsetting fees are determined in annual appropriation acts.)

CBO estimates that other agencies would spend about $1 million annually to implement the bill. According to the Bureau of Transportation Statistics, creating and maintaining a national database on pipeline safety would cost $1 million in 2001 and $500,000 annually after 2001. Based on information from the Office of the Inspector General of DOT, CBO estimates that the study on fines and penalties assessed by OPS would cost less than $250,000.

The provisions in S. 2438 regarding civil and criminal penalties would affect direct spending and governmental receipts (revenues). S. 2438 would increase minimum and maximum civil penalties and would make certain changes to existing criminal penalties for violations of pipeline safety law. Collections of civil and criminal penalties are recorded in the budget as governmental receipts. CBO es-

timates that implementing this legislation would increase such receipts by less than $500,000 a year.

Under current law, governmental receipts derived from criminal penalties are deposited in the Crime Victims Fund and spent in subsequent years. S. 2438 would authorize OPS to spend amounts collected from fines and penalties on the pilot program for state advisory councils. CBO estimates that any net direct spending resulting from this legislation would be insignificant because we estimate that the additional revenue that could be spent by either the Crime Victims Fund or OPS would total less than $500,000 annually.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting S. 2438 would result in changes in direct spending and governmental receipts of less than $500,000 a year.

Intergovernmental and private-sector impact: S. 2438 contains both intergovernmental and private-sector mandates as defined in UMRA because it would impose new requirements on operators of natural gas and hazardous liquid pipelines. Most natural gas pipeline operators are private entities, but some are public entities; hazardous liquid pipelines are privately owned. CBO estimates that the costs of the mandates would not exceed the annual thresholds established in UMRA. (The thresholds are $55 million for intergovernmental mandates and $109 million for private-sector mandates in 2000, adjusted annually for inflation.)

Mandates

Sections 4 and 5 would direct pipeline operators to make available to DOT plans to enhance pipeline personnel qualifications, reduce the likelihood of accidents and injuries, and periodically test pipeline integrity using certain inspection methods. According to DOT's Office of Pipeline Safety, enacting these sections would not alter the agency's current authority and would not result in any significant changes to regulations compared to those which the agency would make under current law. Based on this information from OPS, CBO estimates that enacting these sections would impose no significant costs on pipeline operators.

Section 7 would require pipeline operators to design and implement a public education program to instruct the community on damage prevention, the hazards of unintended releases, and procedures in the event of release. The section would direct pipeline operators to maintain a liaison with state and local emergency response agencies and provide them with detailed information about their pipeline facility and how it operates. Further, the bill would require that the public have access to such information, stating specifically that the data be made available through a widely accessible computerized database. According to OPS, enacting this section would require pipeline operators to publicize additional information relative to current practice. This section, therefore, imposes a new intergovernmental and private-sector mandate. Because the extent of the information to be furnished by pipeline operators will depend on how DOT writes the rule and on the amount of public interest in pipeline data, CBO cannot estimate the exact cost of this mandate. However, based on information provided by DOT and industry representatives, CBO expects that the direct costs of com-

plying with the provisions in section 7 would fall well below the UMRA thresholds. According to those sources, pipeline operators already make such information about their pipelines widely available.

The purpose of section 10 is to enhance DOT's ability to collect and distribute pipeline information in order to improve analysis of hazardous pipeline incidents. The bill would direct the Secretary of Transportation to establish a national depository for such information to be made available to state and local planning and emergency response authorities and to the public. The bill would further require operators of hazardous liquid pipelines to report to DOT each release exceeding five gallons into the environment. Current law calls for the reporting of emissions exceeding 50 gallons of hazardous liquids or carbon dioxide. Section 10 contains a new private-sector mandate because it would impose an additional reporting requirement on hazardous liquid pipeline operators, thereby increasing the cost of an existing mandate. According to OPS, however, operators of hazardous liquid pipelines already voluntarily report most of this information through a pilot program developed by DOT. Therefore, CBO estimates that the mandate imposed by this section would impose minimal costs on operators of hazardous liquid pipelines.

Section 12 would authorize to be appropriated a total of $43 million in fiscal year 2001, of which $35 million is to be derived from user fees, and $50 million for each of fiscal years 2002 and 2003 of which $41 million in each year is to be derived from user fees. DOT collects those user fees from operators of natural gas and hazardous liquid pipelines. The fee levels authorized by the bill would increase the fee amounts that would otherwise be collected under current law. The requirement to pay those fee increases would be a mandate under UMRA. CBO estimates that the new fee levels authorized by the bill would increase the amount collected by $4 million in 2001, $10 million in 2002, and $9 million in 2003 compared to current law. The cost of this mandate would, however, depend on the amount of future appropriations. Based on information from the American Public Gas Association, most of these fees would be paid by private-sector entities, but about 1 percent would be paid by governmental entities such as publicly owned gas utilities.

Other impacts

Under current law, DOT is authorized to enter into agreements with states under which the states implement federal pipeline regulations applying to intrastate gas or hazardous liquid pipelines. Section 5 would authorize states under such agreements to review and assess operators' risk analyses and integrity management plans, and to provide the Secretary with written assessments of those plans. Section 9 would expand the Secretary's authority to delegate to states the oversight of interstate pipelines. Carrying out additional reviews and oversight responsibilities would increase regulatory costs for the states, but the costs would be incurred voluntarily.

Of the total amounts authorized to be appropriated, section 12 authorizes $17 million for fiscal year 2001 and $20 million for fiscal

years 2002 and 2003 for state grants to reimburse up to 50 percent of the cost of state pipeline safety programs.

Estimate prepared by: Federal Costs: James O'Keeffe. Impact on State, Local, and Tribal Governments. Victoria Heid Hall. Impact on the Private Sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The number of persons covered should be consistent with current levels.

PRIVACY

The bill as reported would have no adverse impact on the personal privacy of individuals.

PAPERWORK

There should be no change in paperwork requirements.

SUMMARY OF MAJOR PROVISIONS

The bill provides for a three year authorization of funding for pipeline safety activities at DOT as follows: $26 million for FY 2001; $30 million for FY 2002; and, $30 million in FY 2003. It would further authorize the pipeline State grant program at up to the following levels: $17 million for FY 2001; $20 million for FY 2002; and, $20 million for FY 2003.

In addition to reauthorizing federal pipeline safety programs through FY 2003, the bill provides for a number of statutory directives designed to improve interstate pipeline transportation safety. The bill, as reported, incorporates provisions and concepts from each of the three Senate pipeline bills introduced, and also includes several new safety provisions based on the testimony and recommendations received by the Committee.

DOT–IG AND NTSB RECOMMENDATIONS

S. 2438 would require the implementation of pipeline safety recommendations issued March 13, 2000 by the DOT–IG to RSPA. It would also statutorily require the Secretary of Transportation, the RSPA Administrator and the Director of the Office of Pipeline Safety to respond to NTSB pipeline safety recommendations within 90 days of receipt.

QUALIFICATIONS OF PIPELINE PERSONNEL

The bill would require interstate pipeline operators to submit to the Secretary of Transportation a plan designed to improve qualifications for pipeline personnel. At a minimum, the qualification plan would require pipeline operators to develop plans that demonstrate their employees have the necessary knowledge to safely

and properly perform their assigned duties and would require testing and periodic reexamination of the employees' qualifications. The Department of Transportation completed a negotiated rulemaking in August 1999 addressing to a considerable extent the requirements provided for under this legislation. The bill builds on these requirements and places emphasis on including adequate training and retraining of operator employees as a critical component of operator qualification plans.

In addition, the legislation requires the Secretary to provide a report to Congress three years after enactment evaluating the effectiveness of operator qualification and training efforts. This report should include actions taken by inspectors, recommendations made by inspectors for changes to operator qualification and training programs, and industry responses to those actions and recommendations. Finally, the Secretary may establish appropriate benchmarks or criteria for evaluating and reporting on operator qualification and training.

PIPELINE INTEGRITY INSPECTION PROGRAM

The bill would require DOT to issue regulations mandating interstate pipeline operators to periodically assess the adequacy of their pipelines to safely operate and to adopt and implement integrity management programs to reduce identified risks.

Current law requires the Secretary to identify areas that are unusually sensitive to environmental damage in the event of a hazardous liquid pipeline spill and high density population areas that could be affected in the event of an interstate natural gas pipeline accident. These regions are commonly referred to as "high consequence areas" by DOT. Upon the designation of high consequence areas, the Secretary can require operators to prepare a written integrity management program that includes a plan for baseline assessments (internal inspections or other equivalent alternative technology) of all pipelines that could affect the high consequence area. The Secretary is also authorized to consider requiring each pipeline in the subject areas to be inspected periodically and to prescribe when an instrumental internal inspection device should be used to inspect the hazardous liquid pipeline.

The bill expands on current law by requiring the implementation of integrity management plans for interstate pipelines that traverse environmentally sensitive areas and high density population areas. The additional safety measures proposed in the bill should, at a minimum, require operators to: base their integrity management plans on risk assessments that they conduct; periodically examine the structural and operational integrity of their pipelines; and, take steps to prevent and mitigate unintended releases, such as improving leak detection capabilities or installing restrictive flow devices. The bill includes language to emphasize that the integrity management plans include internal inspection or pressure testing of pipelines, unless to do so is not safe or feasible, in which case another equally effective inspection method could be utilized as determined by the Secretary.

The bill requires the Secretary to review operator integrity management programs and provide continuing monitoring of the integrity management plans. The legislation also requires operators to include in their plans a description of their consultation with high

consequence area State and local officials during the development of the integrity management plan covering the areas and any actions taken by the operator to address safety concerns raised by such officials. The bill is not intended to slow down the process of integrity management plan preparation by imposing undue consultation burdens on operators, and it does not mandate consultations with all local jurisdictions served by the operators. The bill is intended, however, to encourage operators to solicit and address safety issues of local concern. Finally, the bill provides additional authority to the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State regulatory agency, to halt or restrict the operations of a pipeline for 30 days or longer if a hazardous condition is found to exist.

There are significant differences between natural gas transmission and hazardous liquid pipelines, as well as between natural gas transmission lines and natural gas distribution systems. Consequently, the Secretary should address and accommodate those differences, as appropriate, during the development of the integrity management rules and regulations.

PUBLIC EDUCATION, EMERGENCY PREPAREDNESS, AND COMMUNITY RIGHT-TO-KNOW

The bill would require an operator of an interstate gas transmission or hazardous liquid pipeline facility to carry out a continuing public education program so that individuals and municipalities within proximity to the pipelines are aware of certain safety procedures. The public education programs would be expected to include information on the use of one-call notification systems prior to excavation, the possible hazards associated with unintended releases from a pipeline facility, the physical indications that such a release may have occurred, and what steps should be taken for public safety in the event of a pipeline release, and how to report such an event. Public education activities would cover municipalities, school districts, businesses, and homeowners located in areas through which a pipeline traverses. These public education activities should focus on those school districts, businesses, and homeowners that are located within a reasonable proximity to the pipeline, depending on the type of product.

The bill would also direct pipeline operators to initiate and maintain communication with State emergency response commissions and local emergency planning committees and to share with these entities information critical to addressing transmission pipeline safety issues, including information on the types of product transported and efforts by the operator to mitigate safety risks. The provision is aimed at providing greater access to information critical to improving the capabilities of States and local emergency responders to effectively and safely respond to transmission pipeline accidents and incidents. The Committee, however, does not intend the information to include material that would not be pertinent to promoting emergency preparedness, such as operating manuals and certain proprietary information.

The bill also directs the Secretary to prescribe regulations to make certain emergency information and integrity management program information publicly available. The Secretary is authorized to provide technical assistance to the pipeline industry on de-

veloping ways to effectively deliver the information to the public and it is expected that a central Internet-accessible site would serve as an effective way to deliver the information.

The legislation further requires operators to provide mapping information identifying the location of transmission pipeline facilities to municipalities in which the transmission pipeline facility is located. The bill also requires the Secretary to make available to the public certain safety-related reports submitted by operators to the Department of Transportation.

PENALTIES

The bill includes a number of provisions addressing violations of federal pipeline safety regulations, including provisions to increase the maximum amount of civil penalties for violating safety regulations from $25,000 to $100,000 and for a series of violations from $500,000 to $1,000,000. In addition, the bill also makes clear that the cap on civil administrative penalties does not apply to a judicial enforcement action under section 60120 or 60121 of title 49 of the United States Code.

ENHANCED STATE OVERSIGHT

S. 2438 as reported would establish procedures for States to enhance their oversight of pipeline safety. Under the bill, States may enter into agreements with the Secretary to participate in the oversight of interstate lines. However, the bill requires that the State oversight role be consistent with the Secretary's federal interstate natural gas transmission and hazardous liquid pipeline safety and inspection programs, rules, and regulations. The Committee is supportive of allowing States to participate in pipeline safety inspection and oversight activities in an effort to augment the Federal activities. However, the legislative provision does not give States any additional regulatory authority over interstate natural gas transmission and hazardous liquid pipelines, nor does it authorize a State to establish or maintain safety standards affecting the operation of interstate pipelines. Any State agreement entered into with the Secretary must be consistent with Department of Transportation pipeline safety rules and regulations.

The bill also includes language to ensure that the enhanced State participation agreements do not adversely affect State intrastate pipeline safety programs. For example, in the event the Secretary determines a State's intrastate pipeline safety program is being impacted negatively by participation in the enhanced agreement the Secretary is required to cancel the agreement with such State.

The bill continues the existing OPS Interstate Agent program as urged by witnesses testifying before the Committee's hearings. Under the bill, a State's designation as an interstate agent would continue as long as the designation does not negatively impact its required oversight of intrastate pipelines, have an adverse impact on pipeline safety, or impede interstate commerce.

DATA AND TECHNOLOGICAL DEVELOPMENT

The legislation directs the Secretary to develop and implement a comprehensive plan for the collection and use of pipeline data in a manner that would enable incident trend analysis and evalua-

tions of operator performance. It would further require operators to report incident releases greater than five gallons, compared to the current reporting requirement of 50 barrels. In addition, the Secretary is directed to establish a national depository of data to be administered by the Bureau of Transportation Statistics (BTS) in cooperation with RSPA. The data depository should include information about pipeline spill histories and incidents so that the information can be used to help prevent the recurrence of similar spills or incidents.

Given the critical potential for technology advancements to improve safety in all modes of transportation, the bill directs the Secretary to include as part of the Department's overall research and development (R&D) efforts a focus on technologies with the potential to improve pipeline safety, such as new devices to conduct effective pipeline internal inspections and detect product leaks. In addition, the bill allows the Secretary to supplement the Department's pipeline R&D activities by entering into cooperative agreements to explore innovative technological advances.

AUTHORIZATION OF APPROPRIATIONS

The bill increases the authorization of appropriations by providing $26 million in FY 2001 and $30 million in both FY 2002 and 2003 for pipeline safety activities, and providing up to $17 million in FY 2001 and $20 million in both FY 2002 and 2003 for safety grants. In addition, it authorizes up to $8 million annually to be derived from the Oil Spill Liability Trust Fund. The amount derived from the Oil Spill Liability Trust Fund is used to discharge the pipeline program responsibilities of the Oil Pollution Act of 1990. According to the Office of Pipeline Safety, over $8 million was used during FY 1999 to fulfill responsibilities under the Oil Pollution Act.

COOPERATION IN INVESTIGATIONS

In an effort to enhance the ability of the NTSB and DOT to complete pipeline accident investigations in a timely and comprehensive manner, the bill includes a provision requiring operators to make available to the DOT or NTSB all records and information pertaining to the accident, including integrity management plans and test results, and to assist in the investigation to the extent reasonable.

Further, the bill attempts to respond to problems expressed by hearing witnesses concerning situations such as that which occurred in Bellingham, Washington, involving a fatal pipeline accident investigation by NTSB or DOT. During the Committee's hearings this year, testimony was presented indicating that employees who are exercising their rights under the U.S. Constitution's Fifth Amendment sometimes refuse to cooperate during investigations of fatal pipeline accidents. The Committee learned that these same employees may continue to perform the same functions at the company subject to on going investigations.

The Committee recognizes the Constitutional rights of individuals to protect themselves from self-incrimination. The Committee also appreciates the possible criminal liability exposure facing operators and their employees when unintentional accidents and incidents occur. However, there are legitimate concerns that public

safety may be compromised when an individual's on-the-job performance is questioned as part of a natural gas transmission or hazardous liquid pipeline accident investigation and that same employee continues to perform the exact functions at issue in the DOT or NTSB investigation. Therefore, the legislation contains a provision to require an operator to relieve, reassign, or place on leave (with or without compensation) any employee whose duties directly affect public safety and whose performance of those duties is a subject of an accident investigation. The Secretary is required to declare a facility "hazardous" if prompt action is not taken by the operator to relieve, reassign, or place on leave any employee who is a subject of the investigation.

WHISTLEBLOWER PROTECTIONS

To ensure pipeline employees are afforded the same whistleblower protections as are provided to employees in other transportation modes, S. 2438 includes whistleblower protections for pipeline personnel. The provisions are identical to those recently enacted in the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century, Public Law 106–181, with the exception of changing the words "air carrier" to "pipeline."

PIPELINE SAFETY ADVISORY COUNCIL PILOT PROGRAM

The bill authorizes the Secretary of Transportation to carry out a pilot program to explore the effectiveness of creating State Pipeline Safety Advisory Councils. The Secretary would be authorized to carry out a pilot program by establishing advisory councils in one or more States to provide advice and recommendations on a range of hazardous liquid or natural gas transmission pipeline safety issues affecting pipelines operating in the State in which the Council is established. The Committee expects the Secretary to give priority to establishing such Councils in States which have experienced recent fatal pipeline accidents.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The section designates the Act as the Pipeline Safety Improvement Act of 2000.

Section 2. Implementation of Inspector General recommendations

Subsection (a) requires implementation of the pipeline safety recommendations issued March 13, 2000 by the DOT–IG to the Administrator of RSPA, except as otherwise expressly provided in the bill. The IG recommended that RSPA: finalize outstanding 1992 and 1996 Congressional mandates protecting unusually sensitive environmental areas as well as high-density population areas; expand the Administration's pipeline material defect detection research and development program; implement a program to train OPS inspectors on the use and capabilities of internal pipeline inspection technologies; improve the collection and interpretation of pipeline accident data; establish uniform accident reporting requirements; and establish timetables to implement open NTSB pipeline safety recommendations.

Subsection (b) requires the Secretary, not later than 90 days after enactment, and every 90 days thereafter until the recommendations have been implemented, to transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the specific actions taken to implement the recommendations.

Subsection (c) requires the DOT–IG to periodically transmit to the Committees referred to in Subsection (b) a report assessing the Secretary's progress in implementing the recommendations referred to in Subsection (a).

Section 3. NTSB safety recommendations

Subsection (a) requires the Secretary of Transportation, the Administrator of RSPA, and the Director of OPS to respond to NTSB pipeline safety recommendations within 90 days of receipt. Subsection (b) requires the Secretary, the Administrator of RSPA, or the Director of the Office of Pipeline Safety to make a copy of each recommendation on pipeline safety and response available to the public at reasonable cost. Subsection (c) requires the Secretary to submit annually to Congress a report describing each pipeline safety recommendation made by the NTSB during the prior year and the agency's response to each pipeline safety recommendation. In recent years, RSPA has taken an average of 131 days to provide an initial response to NTSB safety recommendations and this provision is aimed at encouraging more timely responses.

Section 4. Qualifications of pipeline personnel

Subsection (a) requires pipeline operators to submit to the Secretary of Transportation or, in the case of an intrastate pipeline facility operator, the appropriate State regulatory agency, a plan designed to enhance the qualifications of pipeline personnel. Subsection (b) authorizes the Secretary to establish minimum standards for pipeline personnel training and evaluation, which may include written and oral examinations, work performance history review, observation during performance on the job, on-the-job-training, or other forms of assessment. The subsection permits the Secretary, or, in the case of an intrastate pipeline facility operator, the appropriate State regulatory agency, to review and certify the submitted plan to determine it is sufficient to provide a safe operating environment and requires periodic review of the plans. Subsection (c) requires the Secretary to submit a report to Congress three years after the date of enactment evaluating the effectiveness of the operator qualification and training efforts.

Section 5. Pipeline Integrity Inspection Program

The section requires the Secretary to issue regulations requiring hazardous liquid pipelines and natural gas transmission pipelines to evaluate the risks to the operator's pipeline facilities in environmentally sensitive and high-density population areas, and adopt and implement a program for integrity management that reduces the risks of an incident in those areas. The section requires the Secretary to issue the risk and integrity management regulations no later than one year after the Secretary issues standards identi-

fying environmentally sensitive and high-density population areas, or by December 31, 2001, whichever is sooner.

The section requires that an operator's integrity management plan be based on risk analysis and include, at a minimum: periodic assessment of the pipeline's integrity, through internal inspection, pressure testing, direct assessment, or other effective methods; clearly defined criteria for evaluating the results of the inspection or testing conducted and procedures to ensure identified problems are corrected in a timely manner; measures, as appropriate, that prevent and mitigate unintended product releases (such as leak detection, restrictive flow devices, or other measures); and, a description of the operator's consultation with State and local officials during development of the integrity management plan and the actions taken by the operator to address safety concerns raised by those officials. The section requires operators to take into account the pipeline's leak history and the potential for the development of pipeline defects when determining how frequently to conduct integrity inspections.

The section further permits a State having a pipeline safety agreement with the Secretary to review and assess an operator's risk analyses and integrity management plan, and provide the Secretary with a written assessment of the operator's plan. The section authorizes such State to make recommendations to address safety concerns not adequately addressed in the operator's plans and to submit documentation explaining the State-proposed plan revisions. The section requires the Secretary to carefully consider the State's proposals and work in consultation with the State and operator to address safety concerns.

The section also authorizes the Secretary to periodically review the operator's risk analysis and integrity management program. The Secretary is required to provide for continued monitoring of such plans. The Secretary is also required to assess and evaluate the effects on safety and the environment of extending all of the requirements to areas not designated as environmentally sensitive or high-density population areas.

Section 6. Enforcement

This section permits the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State regulatory agency, to take action to prevent or restrict the operation of a system for 30 days if a determination is made that allowing the facility's continued operations creates an imminent hazard. The term "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment. The section permits the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State regulatory agency, to extend the action after notice and an opportunity for a hearing if it is determined that the resumption of operation would create an imminent hazard.

Section 7. Public education, emergency preparedness, and community right-to-know

Section (a) requires each owner or operator of a gas or hazardous liquid pipeline facility to carry out a continuing public education program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such a release. Owners or operators of pipeline facilities are required to modify their public education programs as necessary and advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. The section also permits the Secretary to issue standards prescribing the elements of an effective public education program.

The section further requires an operator of a gas transmission or hazardous liquid pipeline facility to initiate and maintain liaison with the State emergency response commissions and local emergency planning committees in the areas of pipeline right-of-way in each State in which it operates. The subsection requires the operator, upon request, to provide a copy of its integrity management program and include certain information including: the business name, address, telephone number of the operator, including a 24-hour emergency contact number; a description of the facility including pipe diameter, the product or products carried, and the operating pressure; maps showing the location of the facility and, when available, any high consequence areas which the pipeline facility traverses; a summary description of the integrity measures the operator uses to assure safety and protection for the environment; and a point of contact to respond to questions from emergency response representatives. The section requires the Secretary to prescribe requirements for public access, as appropriate, to this information as well as to integrity management program information.

The section requires the owner or operator of gas transmission or hazardous liquid pipeline facilities to provide municipalities in which the facility is located, a map identifying the location of such facilities. The section authorizes the Secretary to provide technical assistance to the pipeline industry on developing public safety and public education program content, and best practices for program delivery. The section further authorizes the Secretary to make available to the public safety-related condition reports and pipeline incident reports filed by operators, as well as information concerning integrity management programs.

Section 8. Penalties

Subsection (a) increases the maximum amount of civil penalties. The civil penalty for violating safety regulations would be increased from $25,000 to $100,000 per violation. The subsection also increases the maximum civil penalty for a series of safety regulation violations from $500,000 to $1,000,000. The subsection would also permit the Secretary to take into account the economic benefit gained from a violation of safety regulations without any discount because of subsequent damages.

Subsection (b) clarifies existing law so as to correct the reading of the statute by the district court in *United States* v. *Plummer*, CR 99–121 (D. Minn. 1999). This case was the first prosecution of an excavator under 49 U.S.C. 60123(d)(1). The district court found that the excavator knowingly and willfully excavated without using the available one-call notification system and that the excavator struck an underground hazardous liquid pipeline. Although the excavator pleaded guilty to violation of the Clean Water Act, the district court dismissed the count under section 60123(d)(1). The court found that the location of the term "knowingly and willfully" in that section requires that a prosecutor prove that an excavator who disregards one-call notification and damages a pipeline intended to cause that damage. The subsection inserts the term "knowingly and willfully" before the word "engages." The subsection would also provide that an excavator would not be subject to a felony charge unless the excavator causes significant damage or knows that damage has occurred and does nothing about it.

Subsection (c) permits, on the request of the Secretary of Transportation, the Attorney General to bring a civil action in an appropriate district court to assess civil penalties considering the same factors as prescribed for the Secretary in administrative cases and order injunctive relief as provided under section 60122.

Section 9. State oversight role

The section enhances State pipeline safety oversight responsibilities. Subsection (a) permits the Secretary to make an agreement with a State authorizing the State authority to participate in the safety oversight of interstate pipeline transportation. The subsection requires that each agreement entered into must include a plan for the State authority to participate in special safety investigations involving incidents or new construction and allow participation in other activities overseeing interstate pipeline transportation. Prior to issuing a certificate for participation, the subsection requires the Secretary to determine that: the agreement is consistent with the Secretary's program for inspection and consistent with the safety policies and provisions provided under chapter 601 of title 49, U.S.C.; the agreement would not negatively impact existing State responsibilities for intrastate pipelines; the State is carrying out a program demonstrated to promote preparedness and risk prevention activities that enable communities to live safely with pipelines; the State meets the minimum standards for State one-call notification set forth in chapter 61 of title 49, U.S.C.; and that the actions planned under the agreement would not impede interstate commerce or jeopardize public safety. The subsection also grandfathers State agreements entered into between the Secretary and a State until the Secretary determines that the State meets the requirements set forth in the subsection.

Subsection (b) authorizes the Secretary to end agreements when the Secretary finds that the State has not complied with any provision of the agreement. The subsection also requires the Secretary to end an agreement if it is found that the agreement's implementation has resulted in a gap in intrastate pipeline transportation oversight and the State actions have failed to meet the agreement's requirements, or continued participation by the State in the oversight of interstate pipeline transportation is not promoting pipeline

safety. Prior to ending an agreement under this subsection, the Secretary is required to provide notice and an opportunity for a hearing to the State.

Subsection (c) continues Department of Transportation Interstate Agent Agreements which allow States to inspect interstate hazardous liquid and natural gas transmission pipelines. The subsection does not expand the scope of the agreements and does not grant any enhanced pipeline authority to States designated as interstate agents. The subsection further permits the Secretary to end an interstate agent agreement if the State wishes to withdraw from the agreement or if a finding is made that the agreement's continuation has resulted in a gap in intrastate pipeline transportation oversight or that the interstate agent agreement is not promoting pipeline safety. Prior to ending an agreement under this subsection, the Secretary is required to provide notice and an opportunity for a hearing to the State.

Section 10. Improved data and data availability

Subsection (a) requires the Secretary to develop a comprehensive plan to collect and use pipeline data in order to thoroughly assess the many factors in accidents. The plan developed under this subsection must include components that would allow the performance of sound incident trend analysis and evaluations of pipeline operator performance.

Subsection (b) requires owners and operators of hazardous liquid pipeline facilities to report to the Secretary any release exceeding five gallons of hazardous liquid or carbon dioxide transported. The subsection requires the report to include the location of the release, facilities and personal injuries, type of product, amount of product, cause(s), and the response undertaken to clean up the release. The subsection also requires a person owning or operating a pipeline facility to make records, reports and data available under subsection (a) of the section, and other reasonable described records relevant to incident investigations, available to the Secretary within the time limits prescribed in a written request.

Subsection (c) allows civil and criminal penalties to be assessed against an operator who fails to report releases exceeding five gallons of hazardous liquid or carbon dioxide transported. The subsection also allows civil and criminal penalties to be assessed against an operator who fails to make records, reports and data available as prescribed in subsection (b).

Subsection (d) requires the Secretary to establish a national depository of data on spill histories and corrective actions taken by pipeline operators that would be used to evaluate the risk of, and to prevent, pipeline failures and releases. The subsection directs the Secretary to administer the depository through the Bureau of Transportation Statistics in cooperation with RSPA.

Section 11. Innovative technology development

Subsection (a) requires the Secretary to support research and development of alternative technologies: to expand the detection capabilities of internal inspection devices to detect defects and anomalies; to inspect pipelines that cannot accommodate internal inspection devices available on the date of enactment; to develop innovative techniques measuring the structural integrity of pipelines; to

improve the capability, reliability, and practicality of external leak detection devices; and to develop and improve alternative technologies to identify and monitor outside force damage to pipelines.

Subsection (b) permits the Secretary to participate in additional technological development through cooperative agreements with trade associations, academic institutions, and other qualified organizations. This participation is not intended to supplant the research and development program established in Subsection (a).

Section 12. Authorization of appropriations

The section authorizes appropriations for fiscal years 2001, 2002, and 2003 for pipeline safety activities at DOT and the pipeline safety State grants. For pipeline safety activities at DOT, subsection (a) authorizes $26 million for FY 2001, $30 million for FY 2002, and $30 million for FY 2003. For pipeline safety State grants, subsection (b) authorizes $17 million for FY 2001, $20 million for FY 2002, and $20 million for FY 2003. Subsection (c) authorizes up to $8 million a year to be transferred out of the Oil Spill Liability Trust Fund to support programs authorized in the Act in fiscal years 2001, 2002, and 2003.

Section 13. Operator assistance in investigations

Subsection (a) requires operators to make available to DOT or the NTSB all records and information (including integrity management plans and test results) that pertain in any way to an accident under investigation by DOT or the Board. The subsection also requires operators to afford all reasonable assistance in accident investigations conducted by the Department or the NTSB.

Subsection (b) requires an operator to relieve, reassign, or place on leave (with or without compensation) any employee whose duties affect public safety and whose performance of those duties is a subject of an accident investigation until such time as the investigation is concluded. The subsection requires the Secretary to declare a facility hazardous under 49 U.S.C. 60112 if the operator fails to take prompt action to relieve, reassign, or place on leave the employee whose duties affect public safety.

Section 14. Protection of employees providing pipeline safety information

Subsection (a) prohibits a pipeline operator or contractor or subcontractor of a pipeline from firing, or taking other adverse action against an employee for doing any of the following: providing information to the employer or Federal government relating to pipeline safety; filing or being about to file a proceeding relating to pipeline safety; testifying or being about to testify in such a proceeding; or assisting or participating in such a proceeding.

The subsection establishes procedures governing the filing of complaints by aggrieved whistleblowers at the Department of Labor. The procedures allow whistleblowers who believe they have been fired or otherwise treated unfairly in providing information about an alleged pipeline safety problem to file a complaint with the Secretary of Labor within 180 days of the violation. The subsection requires the Labor Department to notify the person named in the complaint and the Administrator of RSPA of the complaint and the allegations contained in the complaint. The subsection es-

tablishes specific time frames under which the Labor Department must proceed in investigating the whistleblower's complaint. In the event the Department of Labor concludes that there is a reason to believe a violation has occurred, the subsection requires it to issue a preliminary order providing a remedy. The subsection requires that within 30 days of being notified of the Department of Labor's findings, either side may file objections and request a hearing but this shall not stay a reinstatement remedy in the preliminary order.

The subsection describes the final order procedures and lists the remedies that could be ordered as follows: take action to abate the violation; reinstate the employee with back pay; and provide monetary damages to the employee. The subsection provides that if a final order is issued, the Labor Secretary, at the request of the employee, shall assess the employee's attorney's fees against the person whom the order is issued.

The subsection also provides that if the Secretary of Labor finds that a complaint is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorney's fee not exceeding $1,000.

The subsection establishes judicial review procedures that permit either party, within 60 days of the issuance of the final order, to appeal to the circuit court where the violation allegedly occurred or where the employee resided at the time of the violation. The subsection further permits the Labor Secretary to enforce the order by bringing suit in a district court against the person that has failed to comply. The subsection permits the court to issue an injunction or provide other relief.

The subsection also allows the person who won the case before the Secretary to sue the other party to force compliance with the Secretary's order. The subsection establishes that the U.S. district court would have jurisdiction over the case.

The subsection makes clear that the whistleblower protections do not apply to any employee of a pipeline, contractor or subcontractor who, acting without direction from the pipeline contractor or subcontractor, deliberately causes a violation of any requirement relating to pipeline safety.

Subsection (b) makes a conforming amendment.

Section 15. Pipeline Safety Advisory Council pilot program

Subsection (a) requires the Secretary of Transportation to create a Pipeline Safety Advisory Council pilot program. The subsection authorizes the establishment of one or more Councils to provide to the Secretary of Transportation advice and recommendations on a range of hazardous liquid or natural gas transmission pipeline safety issues affecting pipelines operated in the State in which the Council is established.

Subsection (b) defines the composition of a Council established by the pilot program. The subsection requires that a Council established be comprised of 11 members, appointed by the Secretary, who would have to be residents of the State in which the Council would review and monitor the portion of the pipeline located solely in that State. The subsection requires the Council members appointed under the pilot to represent the general public, pipeline rights-of-way property owners (who are not representatives of any

other category in the subsection), local governments, State officials with jurisdiction over pipeline safety, emergency responders and environmental organizations.

Subsection (c) requires that an Advisory Council created by the pilot provide advice to the Secretary on safety regulations and other matters relating to activities and functions of DOT's Office of Pipeline Safety. The subsection requires that each meeting of such an Advisory Council be open to the public and that minutes of each meeting be maintained. In carrying out its advisory duties, the subsection requires an Advisory Council to provide advice and recommendations on policies and regulations relating to the operation and maintenance of pipeline facilities which affect the State to the Secretary of Transportation and the Governor of the State in which the Council is located. The subsection also requires the Advisory Council to review and comment on proposals for new pipeline facilities in the State, including issues of public safety and environmental impact. The subsection also requires the submission of an annual report by an Advisory Council to the Secretary of Transportation on the activities and the steps taken in the State to address its suggested safety recommendations.

Subsection (d) requires an Advisory Council established in the pilot program to submit an application for funding to the Secretary of Transportation. The subsection permits the Secretary to utilize funds obtained from fines and penalties or appropriated funds to support the Council's activities.

Subsection (e) requires the Secretary to determine the need for continuing and, if appropriate, expanding the pilot program. The subsection requires the Secretary to report that determination, together with any recommendations concerning the program, to Congress by December 31, 2004.

Section 16. Fines and penalties

The section requires the Department of Transportation Inspector General to conduct an analysis of the Department's assessment of fines and penalties on gas transmission and hazardous liquid pipelines, including the cost of corrective actions required by the Department in lieu of fines. A report on the analysis is required no later than six months after the date of enactment.

Section 17. Study of rights-of-way

The section authorizes the Secretary to conduct a study on how best to preserve environmental resources in conjunction with maintaining pipeline rights-of-way. The section requires that the study recognize pipeline operators' regulatory obligations to maintain rights-of-way and to protect public safety.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 2438:

Senator Brownback offered an amendment to strike section 15 establishing an Advisory Council pilot program and in lieu of that provision to amend the duties of the Technical Safety Standards Committee to provide for regional meetings. By rollcall vote of 4 yeas and 12 nays as follows, the amendment was defeated:

YEAS—4	NAYS—12
Mr. Lott [1]	Mr. Stevens [1]
Mr. Abraham [1]	Mr. Burns
Mr. Brownback	Mr. Gorton
Mr. Breaux	Ms. Snowe
	Mr. Frist [1]
	Mr. Hollings
	Mr. Inouye [1]
	Mr. Rockefeller [1]
	Mr. Kerry [1]
	Mr. Wyden
	Mr. Cleland [1]
	Mr. McCain

[1] By proxy.

Senator Brownback offered an amendment to strike the State participation provisions established under the bill (which must be consistent with Federal pipeline rules and regulations), to instead would permit limited state participation in investigations. By rollcall vote of 9 yeas and 10 nays as follows the amendment was defeated:

YEAS—9	NAYS—10
Mr. Lott [1]	Mr. Stevens [1]
Mrs. Hutchison [1]	Mr. Burns
Mr. Ashcroft [1]	Mr. Gorton
Mr. Abraham [1]	Ms. Snowe [1]
Mr. Brownback	Mr. Frist [1]
Mr. Hollings	Ms. Inouye [1]
Mr. Rockefeller [1]	Mr. Kerry [1]
Mr. Breaux	Mr. Dorgan [1]
Mr. Cleland [1]	Mr. Wyden
	Mr. McCain

[1] By proxy.

ADDITIONAL VIEWS OF SENATORS BREAUX, LOTT, BROWNBACK, ABRAHAM, HUTCHISON, CLELAND, AND DORGAN

Senator BREAUX (Associated with all parts of these additional views)
Senator LOTT (Associated with all parts of these additional views)
Senator BROWNBACK (Associated with all parts of these additional views)
Senator ABRAHAM (Associated with all parts of these additional views)
Senator HUTCHISON (Associated with the additional views relating to sections 5 and 9)
Senator CLELAND (Associated with the additional views relating to sections 5, 9, and 13)
Senator DORGAN (Associated with the additional views relating to sections 5 and 9)

While there were many pipeline safety issues that the Committee addressed in the manager's amendment to S. 2438, there were several issues that were not resolved prior to the markup and amendments were offered to address those concerns. Debate during the markup centered on the four issues identified in these additional views, and alternatives were offered to address the concerns raised. Although we hope to work with the Chairman and members of the Committee on a manager's amendment prior to floor consideration which would provide solutions to these problems, we would like to state our concerns about the legislation approved by the Committee on June 15, 2000.

ADDITIONAL VIEWS WITH RESPECT TO SECTION 5, THE PIPELINE INTEGRITY INSPECTION PROGRAM

INTERNAL INSPECTIONS

Section 5 of the bill contains a requirement that each pipeline company develop integrity management plans which include "internal inspection or pressure testing, or other equally protective methods, where these techniques are not feasible, that periodically assesses the integrity of the pipeline." While we agree that there should be periodic inspections of the pipeline, we are concerned that this language might be interpreted as requiring periodic internal inspections using "smart pigs" and/or hydrostatic testing. In many instances, "smart pigs" are useful tools, but like any device, they have limitations. While approximately 90 percent of interstate liquid pipelines are "piggable," only 35 percent of interstate natural gas pipeline mileage is "piggable." If "smart pigs" were to be required, the majority of the remaining natural gas pipelines would have to be re-engineered for smart pigs at great cost, which would result in lengthy and dramatic gas service interruptions. In addi-

tion, there are concerns about pressure testing, which could result in publicly unacceptable service disruptions, as well as actually weakening the pipeline and causing future safety problems. Although the bill gives DOT the flexibility to allow other techniques where "feasible," it does not define what is, and is not "feasible." For example, shutting down an interstate pipeline for a month of testing is "feasible," but is likely not acceptable to those customers served by the pipeline.

During the Committee debate on this issue, it was clear that this language was drafted to provide flexibility and members indicated a willingness to work toward language that would clarify which types of assessment methods could be utilized. For example, direct assessment is an inspection method whereby sections of pipe are dug up and examined for corrosion or other anomalies—in some situations this method may be the most effective. We want to be assured that this bill improves safety in a way that makes good sense and does not disrupt service to the public.

CONSULTATION WITH STATE AND LOCAL OFFICIALS

Section 5 requires "a description of the operators' consultation with State and local officials during development of the integrity management plan and actions taken by the operator to address safety concerns raised by such officials." Interstate pipelines go through numerous States and localities. It would be impossible for pipelines to confer with all local officials and get an integrity plan out in any reasonable period of time. During the markup, it was suggested that the State might be the most appropriate entity to coordinate local concerns regarding the development of integrity management plans with the Office of Pipeline Safety and interstate pipeline operators. We are concerned that the language in the bill would infer that any local official would have the ability to delay the implementation of an integrity management plan, or that competitor operations might use the process adversely for competitive rather than safety purposes.

ADDITIONAL VIEWS WITH RESPECT TO SECTION 9, THE STATE OVERSIGHT ROLE

An additional concern we have, which was raised during Committee consideration of the bill, is the appropriate role for States in the oversight of interstate pipelines. We support a role for States working in conjunction with the federal Office of Pipeline Safety in conducting inspections of existing interstate pipelines and construction of new pipelines according to federal standards. In addition, we support State agencies participating in incident investigations in compliance with Department of Transportation regulations. However, we are concerned that some of the language in this section could be interpreted to permit States to set standards and regulations over and above those set by the Department of Transportation.

Section 9 suggests that States will participate in the "oversight" of interstate pipelines and allows the State authority to participate in other activities overseeing interstate pipeline transportation or to assume additional inspection or investigatory duties. We have concerns about this provision, because the oversight of interstate

pipelines is the exclusive regulatory jurisdiction of DOT (pursuant to 49 USC 60104(c)). Although an amendment was offered to clarify the intent of this provision, it was defeated 9 to 10. A number of Senators have expressed concerns with States being able to set their own standards for interstate pipelines, which could ultimately result in a patchwork system of regulations throughout the country. This situation with different standards in different States would not add to safety, but could actually hinder it. Not only would 50 different sets of regulations divert resources away from where they are most needed to improve safety, but they would also hinder interstate commerce, the primary rationale for federal regulation.

ADDITIONAL VIEWS WITH RESPECT TO SECTION 13, OPERATOR ASSISTANCE IN INVESTIGATIONS

We have significant problems with section 13 which requires that the Secretary of Transportation take action against a pipeline operator if the operator fails to reassign, relieve, or place on leave any employee whose duties affect public safety and whose performance of those duties is a subject of an accident investigation. This is the wrong answer to the problem of individuals exercising their constitutional rights.

This provision attempts to remedy a situation that resulted from the Olympic pipeline accident in Bellingham, Washington. A number of employees of Olympic pipeline exercised their Fifth Amendment rights when the Department of Justice filed a criminal suit against them under the Clean Water Act. Because they are facing criminal charges, the employees are not cooperating in the National Transportation Safety Board investigation of the pipeline accident. The criminal charges pending are for a finding of negligence, not gross negligence.

As written, section 13 requires a pipeline operator to take action against any employee whose performance of duties are a subject of an accident investigation. The legislation would require an operator to relieve, reassign, or place on leave (with or without compensation) any employee, regardless of their role in the accident, whose duties directly affect public safety and whose performance of those duties is the subject of an accident investigation until such time as the investigation is concluded—which may take years. If a pipeline operator does not take prompt action against the employee, the Secretary is required to declare the pipeline facility "hazardous" under section 60112 and could shut down the pipeline.

The provision provides no discretion to the Secretary. Ultimately, there is no consideration for how much this action will disrupt service to the public. Pipeline systems may be unique in operation and limiting or eliminating the use of certain personnel could have extremely adverse effects on the general population relying on pipeline service. There is no recognition of adverse safety consequences due to relieving, reassigning or placing employees on leave, which has the potential to create a situation in which there are not enough qualified individuals to perform the necessary safety and operational functions on the pipeline. This proposal is bad public policy.

ADDITIONAL VIEWS WITH RESPECT TO SECTION 15, THE PIPELINE SAFETY ADVISORY COUNCIL PILOT PROGRAM

Section 15 creates a pilot program under the Department of Transportation establishing one or more State advisory councils to provide the Secretary advice and recommendations on a range of issues affecting liquid and natural gas pipelines. It is not clear whether these councils are subject to the Federal Advisory Committee Act.

While there was much discussion of this issue during the Committee markup, we are concerned about the public policy objectives of this pilot program. There are already a number of ways the Secretary can obtain public input on pipeline safety issues. The Secretary can hold hearings around the country, conduct workshops, or utilize the existing Technical Safety Standards Committees. It is the role of the Department of Transportation and the States if they become interstate agents to provide safety oversight of pipeline operations.

Finally, there are a number of other concerns that we have with this provision. For example, it does not limit the number of advisory councils, it does not require a charter to ensure a limited scope of purpose, does not sunset the councils, it does not provide any pipeline representation on these councils, nor does it prohibit competitors of pipelines from sitting on these councils. Additionally, advisory councils could actually harm pipeline safety by diverting resources from safety functions to provide funding for advisory councils. Also, since these advisory councils inherently serve local or State interests, their costs should be borne by the localities or States requesting their establishment.

CONCLUDING ADDITIONAL VIEWS

Again, while we support much of the Committee-passed bill, we continue to have reservations about the sections discussed above. We would like to work with the Chairman and members of the Committee to craft a manager's amendment which would address the concerns identified in these views prior to floor consideration.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

CHAPTER 601—SAFETY

§ 60106. State pipeline safety agreements

(a) [GENERAL AUTHORITY.—] *AGREEMENTS WITHOUT CERTIFICATION.*—If the Secretary of Transportation does not receive a certification under section 60105 of this title, the Secretary may make an agreement with a State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) authorizing it to take necessary action. Each agreement shall—

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with applicable safety standards prescribed under this chapter; and

(2) prescribe procedures for approval of plans of inspection and maintenance substantially the same as required under section 60108 (a) and (b) of this title.

(b) AGREEMENTS WITH CERTIFICATION.—

(1) IN GENERAL.—If the Secretary accepts a certification under section 60105 of this title and makes the determination required under this subsection, the Secretary may make an agreement with a State authority authorizing it to participate in the oversight of interstate pipeline transportation. Each such agreement shall include a plan for the State authority to participate in special investigations involving incidents or new construction and allow the State authority to participate in other activities overseeing interstate pipeline transportation or to assume additional inspection or investigatory duties.

(2) DETERMINATIONS REQUIRED.—The Secretary may not enter into an agreement under this subsection, unless the Secretary determines that—

(A) the agreement allowing participation of the State authority is consistent with the Secretary's program for inspection and consistent with the safety policies and provisions provided under this chapter;

(B) the interstate participation agreement would not adversely affect the oversight responsibilities of intrastate pipeline transportation by the State authority;

(C) the State is carrying out a program demonstrated to promote preparedness and risk prevention activities that enable communities to live safely with pipelines;

(D) the State meets the minimum standards for State one-call notification set forth in chapter 6l; and

(E) the actions planned under the agreement would not impede interstate commerce or jeopardize public safety.

(3) EXISTING AGREEMENTS.—Except as provided in subsection (e), an agreement between the Secretary and a State authority that is in effect on the date of enactment of the Pipeline Safety Improvement Act of 2000 shall remain in effect until the Secretary determines that the State meets the requirements for a determination under paragraph (2).

[(b)**]** *(c)* NOTIFICATION.—Each agreement shall require the State authority to notify the Secretary promptly of a violation or probable violation of an applicable safety standard discovered as a result of action taken in carrying out an agreement under this section.

[(c)**]** *(d)* MONITORING.—The Secretary may monitor a safety program established under this section to ensure that the program complies with the agreement. A State authority shall cooperate with the Secretary under this subsection.

[(d) ENDING AGREEMENTS.—The Secretary may end an agreement made under this section when the Secretary finds that the State authority has not complied with any provision of the agreement. The Secretary shall give the authority notice and an opportunity for a hearing before ending an agreement. The finding and decision to end the agreement shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.**]**

(e) ENDING AGREEMENTS.—

(1) PERMISSIVE TERMINATION.—The Secretary may end an agreement under this section when the Secretary finds that the State authority has not complied with any provision of the agreement.

(2) MANDATORY TERMINATION OF AGREEMENT.—The Secretary shall end an agreement for the oversight of interstate pipeline transportation if the Secretary finds that—

(A) implementation of such agreement has resulted in a gap in the oversight responsibilities of intrastate pipeline transportation by the State authority;

(B) the State actions under the agreement have failed to meet the requirements under subsection (b); or

(C) continued participation by the State authority in the oversight of interstate pipeline transportation is not promoting pipeline safety.

(3) PROCEDURAL REQUIREMENTS.—The Secretary shall give the notice and an opportunity for a hearing to a State authority before ending an agreement under this section. The Secretary may provide a State an opportunity to correct any deficiencies before ending an agreement. The finding and decision to end the agreement shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication unless the Secretary finds that continuation of an agreement poses an imminent hazard.

§ 60109. High-density population areas and environmentally sensitive areas

(a) IDENTIFICATION REQUIREMENTS.—Not later than October 24, 1994, the Secretary of Transportation shall prescribe standards that—

(1) establish criteria for identifying—

(A) by operators of gas pipeline facilities, each gas pipeline facility (except a natural gas distribution line) located in a high-density population area; and

(B) by operators of hazardous liquid pipeline facilities and gathering lines—

(i) each hazardous liquid pipeline facility, whether otherwise subject to this chapter, that crosses waters where a substantial likelihood of commercial navigation exists or that is located in an area described in the criteria as a high-density population area; and

(ii) each hazardous liquid pipeline facility and gathering line, whether otherwise subject to this chapter, located in an area that the Secretary, in consultation with the Administrator of the Environmental Protection Agency, describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident; and

(2) provide that the identification be carried out through the inventory required under section 60102(e) of this title.

(b) AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describing areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, the Secretary shall consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage, including—

(1) locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and

(2) locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.

(c) INTEGRITY MANAGEMENT.—

(1) GENERAL REQUIREMENT.—The Secretary shall promulgate regulations requiring operators of hazardous liquid pipelines and natural gas transmission pipelines to evaluate the risks to the operator's pipeline facilities in areas identified pursuant to subsection (a)(1), and to adopt and implement a program for integrity management that reduces the risk of an incident in those areas. The regulations shall be issued no later than one year after the Secretary has issued standards pursuant to subsections (a) and (b) of this section or by December 31, 2001, whichever is sooner.

(2) STANDARDS FOR PROGRAM.—In promulgating regulations under this section, the Secretary shall require an operator's integrity management plan to be based on risk analysis and each plan shall include, at a minimum—

(A) internal inspection or pressure testing, or another equally protective methods, where these techniques are not feasible, that periodically assesses the integrity of the pipeline;

(B) clearly defined criteria for evaluating the results of the inspection or testing done under subparagraph (A) and procedures to ensure identified problems are corrected in a timely manner;

(C) measures, as appropriate, that prevent and mitigate unintended releases, such as leak detection, integrity evaluation, restrictive flow devices, or other measures; and

(D) a description of the operators' consultation with State and local officials during development of the integrity management plan and actions taken by the operator to address safety concerns raised by such officials.

(3) CRITERIA FOR PROGRAM STANDARDS.—In deciding how frequently the integrity inspections or testing under paragraph (2)(A) must be conducted, an operator shall take into account the potential for new defects developing or previously identified structural defects caused by construction or installation, the operational characteristics of the pipeline, and leak history. In addition, the Secretary may establish a minimum testing requirement for operators of pipelines to conduct internal inspections.

(4) STATE ROLE.—A State authority that has an agreement in effect with the Secretary under section 60106 is authorized to review and assess an operator's risk analyses and integrity management plans required under this section for interstate pipelines located in that State. The reviewing State authority shall provide the Secretary with a written assessment of the plans, make recommendations, as appropriate, to address safety concerns not adequately addressed in the operator's plans, and submit documentation explaining the State-proposed plan revisions. The Secretary shall carefully consider the State's proposals and work in consultation with the States and operators to address safety concerns.

(5) MONITORING IMPLEMENTATION.—The Secretary of Transportation shall review the risk analysis and program for integrity management required under this section and provide for continued monitoring of such plans. Not later than 2 years after the implementation of integrity management plans under this section, the Secretary shall complete an assessment and evaluation of the effects on safety and the environment of extending all of the requirements mandated by the regulations described in paragraph (1) to additional areas. The Secretary shall submit the assessment and evaluation to Congress along with any recommendations to improve and expand the utilization of integrity management plans.

§ 60112. Pipeline facilities hazardous to life and property

[(a) GENERAL AUTHORITY.—After notice and an opportunity for a hearing, the Secretary of Transportation may decide a pipeline facility is hazardous if the Secretary decides the facility is—

[(1) hazardous to life, property, or the environment; or

[(2) constructed or operated, or a component of the facility is constructed or operated, with equipment, material, or a technique the Secretary decides is hazardous to life, property, or the environment.]

(a) GENERAL AUTHORITY.—After notice and an opportunity for a hearing, the Secretary of Transportation may decide a pipeline facility is hazardous if the Secretary decides that—

(1) operation of the facility is or would be hazardous to life, property, or the environment; or

(2) the facility is, or would be, constructed or operated, of a component of the facility is, or would be, constructed or operated with equipment, material, or a technique that the Secretary decides is hazardous to life, property, or the environment.

(b) CONSIDERATIONS.—In making a decision under subsection (a) of this section, the Secretary shall consider, if relevant—

(1) the characteristics of the pipe and other equipment used in the pipeline facility, including the age, manufacture, physical properties, and method of manufacturing, constructing, or assembling the equipment;

(2) the nature of the material the pipeline facility transports, the corrosive and deteriorative qualities of the material, the sequence in which the material are transported, and the pressure required for transporting the material;

(3) the aspects of the area in which the pipeline facility is located, including climatic and geologic conditions and soil characteristics;

(4) the proximity of the area in which the hazardous liquid pipeline facility is located to environmentally sensitive areas;

(5) the population density and population and growth patterns of the area in which the pipeline facility is located;

(6) any recommendation of the National Transportation Safety Board made under another law; and

(7) other factors the Secretary considers appropriate.

(c) OPPORTUNITY FOR STATE COMMENT.—The Secretary shall provide, to any appropriate official of a State in which a pipeline facility is located and about which a proceeding has begun under this section, notice and an opportunity to comment on an agreement the Secretary proposes to make to resolve the proceeding. State comment shall incorporate comments of affected local officials.

(d) CORRECTIVE ACTION ORDERS.—If the Secretary decides under subsection (a) of this section that a pipeline facility [is hazardous,] *is, or would be, hazardous,* the Secretary shall order the operator of the facility to take necessary corrective action, including suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.

(e) WAIVER OF NOTICE AND HEARING IN EMERGENCY.—The Secretary may waive the requirements for notice and an opportunity for a hearing under this section and issue expeditiously an order under this section if the Secretary decides failure to issue the order expeditiously will result in likely serious harm to life, property, or the environment. An order under this subsection shall provide an opportunity for a hearing as soon as practicable after the order is issued.

(f) SHUTDOWN AUTHORITY.—

(1) IN GENERAL.—If the Secretary, or, in the case of an intrastate pipeline facility operator, the appropriate State regulatory agency, determines that allowing the continued operation of a hazardous liquid or natural gas pipeline creates an imminent hazard (as defined in section 5102(5)), the Secretary or the agency shall take such action as may be necessary to prevent or restrict the operation of that system for 30 days.

(2) SUBSEQUENT EXTENSION AFTER NOTICE AND HEARING.—After taking action under paragraph (1), the Secretary or the agency may extend the period that action is in effect if the Secretary or the agency determines, after notice and an opportunity for a hearing, that allowing the operation of the pipeline to resume would create an imminent hazard (as defined in section 5102).

[§ 60116. Public education programs

[Under regulations the Secretary of Transportation prescribes, each owner or operator of a gas pipeline facility shall carry out a program to educate the public on the use of a one-call notification system prior to excavation, the possible hazards associated with gas leaks, and the importance of reporting gas odors and leaks to the appropriate authority. The Secretary may develop material suitable for use in the program.]

§ 60116. Public education, emergency preparedness, and community right to know

(a) PUBLIC EDUCATION PROGRAMS.—

(1) Each owner or operator of a gas or hazardous liquid pipeline facility shall carry out a continuing program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.

(2) Within 12 months after the date of enactment of the Pipeline Safety Improvement Act of 2000, each owner or operator of a gas or hazardous liquid pipeline facility shall review its existing public education program for effectiveness and modify the program as necessary. The completed program shall include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. The completed program shall be submitted to the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency and shall be periodically reviewed by the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

(3) The Secretary may issue standards prescribing the elements of an effective public education program. The Secretary may also develop material for use in the program.

(b) EMERGENCY PREPAREDNESS.—

(1) OPERATOR LIAISON.—Within 12 months after the date of enactment of the Pipeline Safety Improvement Act of 2000, an operator of a gas transmission or hazardous liquid pipeline fa-

cility shall initiate and maintain liaison with the State emergency response commissions, and local emergency planning committees in the areas of pipeline right-of-way, established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001) in each State in which it operates.

(2) INFORMATION.—An operator shall, upon request, make available to the State emergency response commissions and local emergency planning committees, and shall make available to the Office of Pipeline Safety in a standardized form for the purpose of providing the information to the public, the information described in section 60102(d), any program for integrity management, and information about implementation of that program. The information about the facility shall also include, at a minimum—

(A) the business name, address, telephone number of the operator, including a 24-hour emergency contact number;

(B) a description of the facility including pipe diameter, the product or products carried, and the operating pressure;

(C) with respect to transmission pipeline facilities, maps showing the location of the facility and, when available, any high consequence areas which the pipeline facility traverses or adjoins and abuts;

(D) a summary description of the integrity measures the operator uses to assure safety and protection for the environment; and

(E) a point of contact to respond to questions from emergency response representative.

(3) SMALLER COMMUNITIES.—In a community without a local emergency planning committee, the operator shall maintain liaison with the local fire, police, and other emergency response agencies.

(4) PUBLIC ACCESS.—The Secretary shall prescribe requirements for public access, as appropriate, to this information, including a requirement that the information be made available to the public by widely accessible computerized database.

(c) COMMUNITY RIGHT TO KNOW.—Not later than 12 months after the date of enactment of the Pipeline Safety Improvement Act of 2000, and annually thereafter, the owner or operator of each gas transmission or hazardous liquid pipeline facility shall provide to the governing body of each municipality in which the pipeline facility is located, a map identifying the location of such facility. The map may be provided in electronic form. The Secretary may provide technical assistance to the pipeline industry on developing public safety and public education program content and best practices for program delivery, and on evaluating the effectiveness of the programs. The Secretary may also provide technical assistance to State and local officials in applying practices developed in these programs to their activities to promote pipeline safety.

(d) PUBLIC AVAILABILITY OF REPORTS.—The Secretary shall—

(1) make available to the public—

(A) a safety-related condition report filed by an operator under section 60102(h);

(B) a report of a pipeline incident filed by an operator;

(C) the results of any inspection by the Office of Pipeline Safety or a State regulatory official; and

(D) a description of any corrective action taken in response to a safety-related condition reported under subparagraph (A), (B), or (C); and

(2) prescribe requirements for public access, as appropriate, to integrity management program information prepared under this chapter, including requirements that will ensure data accessibility to the greatest extent feasible.

§ 60117. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of Transportation may conduct investigations, make reports, issue subpenas, conduct hearings, require the production of records, take depositions, and conduct research, testing, development, demonstration, and training activities and promotional activities relating to prevention of damage to pipeline facilities. The Secretary may not charge a tuition-type fee for training State or local government personnel in the enforcement of regulations prescribed under this chapter.

(b) RECORDS, REPORTS, AND INFORMATION.—*(1)* To enable the Secretary to decide whether a person owning or operating a pipeline facility is complying with this chapter and standards prescribed or orders issued under this chapter, the person shall—

[(1)**]** *(A)* maintain records, make reports, and provide information the Secretary requires; and

[(2)**]** *(B)* make the records, reports, and information available when the Secretary requests.

(2) A person owning or operating a hazardous liquid pipeline facility shall report to the Secretary each release to the environment greater than five gallons of the hazardous liquid or carbon dioxide transported. This section applies to releases from pipeline facilities regulated under this chapter. A report must include the location of the release, fatalities and personal injuries, type of product, amount of product release, cause or causes of the release, extent of damage to property and the environment, and the response undertaken to clean up the release.

(3) During the course of an incident investigation, a person owning or operating a pipeline facility shall make records, reports, and information required under subsection (a) of this section or other reasonably described records, reports, and information relevant to the incident investigation, available to the Secretary within the time limits prescribed in a written request.

(4) The Secretary may require owners and operators of gathering lines to provide the Secretary information pertinent to the Secretary's ability to make a determination as to whether and to what extent to regulate gathering lines.

(c) ENTRY AND INSPECTION.—An officer, employee, or agent of the Department of Transportation designated by the Secretary, on display of proper credentials to the individual in charge, may enter premises to inspect the records and property of a person at a reasonable time and in a reasonable way to decide whether a person is complying with this chapter and standards prescribed or orders issued under this chapter.

(d) CONFIDENTIALITY OF INFORMATION.—Information related to a confidential matter referred to in section 1905 of title 18 that is obtained by the Secretary or an officer, employee, or agent in carrying out this section may be disclosed only to another officer or employee concerned with carrying out this chapter or in a proceeding under this chapter.

(e) USE OF ACCIDENT REPORTS.—

(1) Each accident report made by an officer, employee, or agent of the Department may be used in a judicial proceeding resulting from the accident. The officer, employee, or agent may be required to testify in the proceeding about the facts developed in investigating the accident. The report shall be made available to the public in a way that does not identify an individual.

(2) Each report related to research and demonstration projects and related activities is public information.

(f) TESTING FACILITIES INVOLVED IN ACCIDENTS.—The Secretary may require testing of a part of a pipeline facility subject to this chapter that has been involved in or affected by an accident only after—

(1) notifying the appropriate State official in the State in which the facility is located; and

(2) attempting to negotiate a mutually acceptable plan for testing with the owner of the facility and, when the Secretary considers appropriate, the National Transportation Safety Board.

(g) PROVIDING SAFETY INFORMATION.—On request, the Secretary shall provide the Federal Energy Regulatory Commission or appropriate State authority with information the Secretary has on the safety of material, operations, devices, or processes related to pipeline transportation or operating a pipeline facility.

(h) COOPERATION.—The Secretary may—

(1) advise, assist, and cooperate with other departments, agencies, and instrumentalities of the United States Government, the States, and public and private agencies and persons in planning and developing safety standards and ways to inspect and test to decide whether those standards have been complied with;

(2) consult with and make recommendations to other departments, agencies, and instrumentalities of the Government, State and local governments, and public and private agencies and persons to develop and encourage activities, including the enactment of legislation, that will assist in carrying out this chapter and improve State and local pipeline safety programs; and

(3) participate in a proceeding involving safety requirements related to a liquefied natural gas facility before the Commission or a State authority.

(i) PROMOTING COORDINATION.—

(1) After consulting with appropriate State officials, the Secretary shall establish procedures to promote more effective coordination between departments, agencies, and instrumentalities of the Government and State authorities with regulatory

authority over pipeline facilities about responses to a pipeline accident.

(2) In consultation with the Occupational Safety and Health Administration, the Secretary shall establish procedures to notify the Administration of any pipeline accident in which an excavator that has caused damage to a pipeline may have violated a regulation of the Administration.

(j) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

(k) AUTHORITY FOR COOPERATIVE AGREEMENTS.—To carry out this chapter, the Secretary may enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of State or local government, any educational institution, or any other entity to further the objectives of this chapter. The objectives of this chapter include the development, improvement, and promotion of one-call damage prevention programs, research, risk assessment, and mapping.

(l) NATIONAL DEPOSITORY.—The Secretary shall establish a national depository of data on events and conditions, including spill histories and corrective actions for specific incidents, that can be used to evaluate the risk of, and to prevent, pipeline failures and releases. The Secretary shall administer the program through the Bureau of Transportation Statistics, in cooperation with the Research and Special Programs Administration, and shall make such information available for use by State and local planning and emergency response authorities and the public.

§ 60120. Enforcement

(a) CIVIL ACTIONS.—

[(1) On the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including punitive damages.**]**

(1) On the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter, including section 60112 of this chapter, or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same factors as prescribed for the Secretary in an administrative case under section 60122.

(2) At the request of the Secretary, the Attorney General may bring a civil action in a district court of the United States to require a person to comply immediately with a subpena or to allow an officer, employee, or agent authorized by the Secretary to enter the premises, and inspect the records and property, of the person to decide whether the person is complying with this chapter. The action may be brought in the judicial district in which the defendant resides, is found, or does busi-

ness. The court may punish a failure to obey the order as a contempt of court.

(b) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction issued under this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(c) EFFECT ON TORT LIABILITY.—This chapter does not affect the tort liability of any person.

§ 60122. Civil penalties

(a) GENERAL PENALTIES.—

(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section **[**60114(c)**]** *60117(b)(3)* or 60118(a) of this title or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than **[**$25,000**]** *$500,000* for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of violations is **[**$500,000.**]** *$1,000,000. The preceding sentence does not apply to judicial enforcement action under section 60120 or 60121.*

(2) A person violating a standard or order under section 60103 or 60111 of this title is liable to the Government for a civil penalty of not more than $50,000 for each violation. A penalty under this paragraph may be imposed in addition to penalties imposed under paragraph (1) of this subsection.

(3) A person violating section 60129, or an order issued thereunder, is liable to the Government for a civil penalty of not more than $1,000 for each violation. The penalties provided by paragraph (1) do not apply to a violation of section 60129 or an order issued thereunder.

[(b) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section, the Secretary shall consider—

[(1) the nature, circumstances, and gravity of the violation;

[(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue doing business;

[(3) good faith in attempting to comply; and

[(4) other matters that justice requires.**]**

(b) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section—

(1) the Secretary shall consider—

(A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, any effect on ability to continue doing business; and

(C) good faith in attempting to comply; and

(2) the Secretary may consider—

(A) the economic benefit gained from the violation without any discount because of subsequent damages; and

(B) other matters that justice requires.

(c) COLLECTION AND COMPROMISE.—

(1) The Secretary may request the Attorney General to bring a civil action in an appropriate district court of the United States to collect a civil penalty imposed under this section.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(d) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(e) DEPOSIT IN TREASURY.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(f) PROHIBITION ON MULTIPLE PENALTIES FOR SAME ACT.—Separate penalties for violating a regulation prescribed under this chapter and for violating an order under section 60112 or 60118(b) of this title may not be imposed under this chapter if both violations are based on the same act.

§ 60123. Criminal penalties

(a) GENERAL PENALTY.—A person knowingly and willfully violating section **[**60114(c),**]** *60117(b)(3),* 60118(a), or 60128 of this title or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) PENALTY FOR DAMAGING OR DESTROYING FACILITY.—A person knowingly and willfully damaging or destroying, or attempting to damage or destroy, an interstate gas pipeline facility or interstate hazardous liquid pipeline facility shall be fined under title 18, imprisoned for not more than 15 years, or both.

(c) PENALTY FOR DAMAGING OR DESTROYING SIGN.—A person knowingly and willfully defacing, damaging, removing, or destroying a pipeline sign or right-of-way marker required by a law or regulation of the United States shall be fined under title 18, imprisoned for not more than one year, or both.

(d) PENALTY FOR NOT USING ONE-CALL NOTIFICATION SYSTEM OR NOT HEEDING LOCATION INFORMATION OR MARKINGS.—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the **[**person knowingly and willfully—**]** *person—*

(1) *knowingly and willfully* engages in an excavation activity—

(A) without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or

(B) without paying attention to appropriate location information or markings the operator of a pipeline facility establishes; and

(2) subsequently damages—

(A) a pipeline facility that results in death, serious bodily harm, or actual damage to property of more than $50,000;

[(B) a pipeline facility that does not report the damage promptly to the operator of the pipeline facility and to other appropriate authorities; or**]**

(B) a pipeline facility, is aware of damage, and does not report the damage promptly to the operator of the pipeline facility and to other appropriate authorities; or

(C) a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product.

§ 60125. Authorization of appropriations

[(a) GAS AND HAZARDOUS LIQUID.—To carry out this chapter (except for sections 60107 and 60114(b)) related to gas and hazardous liquid, there are authorized to be appropriated to the Department of Transportation—

[(1) $19,448,000 for fiscal year 1996;

[(2) $20,028,000 for fiscal year 1997, of which $14,600,000 is to be derived from user fees for fiscal year 1997 collected under section 60301 of this title;

[(3) $20,729,000 for fiscal year 1998, of which $15,100,000 is to be derived from user fees for fiscal year 1998 collected under section 60301 of this title;

[(4) $21,442,000 for fiscal year 1999, of which $15,700,000 is to be derived from user fees for fiscal year 1999 collected under section 60301 of this title; and

[(5) $22,194,000 for fiscal year 2000, of which $16,300,000 is to be derived from user fees for fiscal year 2000 collected under section 60301 of this title.]

(a) GAS AND HAZARDOUS LIQUID.—To carry out this chapter and other pipeline-related damage prevention activities of this title (except for section 60107), there are authorized to be appropriated to the Department of Transportation—

(1) $26,000,000 for fiscal year 2001, of which $20,000,000 is to be derived from user fees for fiscal year 2001 collected under section 60301 of this title; and

(2) $30,000,000 for each of the fiscal years 2002 and 2003 of which $23,000,000 is to be derived from user fees for fiscal year 2002 and fiscal year 2003 collected under section 60301 of this title.

(b) HAZARDOUS LIQUID.—Not more than the following amounts may be appropriated to the Secretary to carry out this chapter (except sections 60107 and 60114(b)) related to hazardous liquid:

(1) $1,728,500 for the fiscal year ending September 30, 1993.

(2) $1,866,800 for the fiscal year ending September 30, 1994.

(3) $2,000,000 for the fiscal year ending September 30, 1995.

[(c) STATE GRANTS.—

[(1) Not more than the following amounts may be appropriated to the Secretary to carry out section 60107 of this title:

[(A) $7,750,000 for the fiscal year ending September 30, 1993.

[(B) $9,000,000 for the fiscal year ending September 30, 1994.

[(C) $10,000,000 for the fiscal year ending September 30, 1995.

[(D) $12,000,000 for fiscal year 1996.

[(E) $14,000,000 for fiscal year 1997, of which $12,500,000 is to be derived from user fees for fiscal year 1997 collected under section 60301 of this title.

[(F) $14,490,000 for fiscal year 1998, of which $12,900,000 is to be derived from user fees for fiscal year 1998 collected under section 60301 of this title.

[(G) $15,000,000 for fiscal year 1999, of which $13,300,000 is to be derived from user fees for fiscal year 1999 collected under section 60301 of this title.

[(H) $15,524,000 for fiscal year 2000, of which $13,700,000 is to be derived from user fees for fiscal year 2000 collected under section 60301 of this title.

[(2) At least 5 percent of amounts appropriated to carry out United States Government grants-in-aid programs for a fiscal year are available only to carry out section 60107 of this title related to hazardous liquid.

[(3) Not more than 20 percent of a pipeline safety program grant under section 60107 of this title may be allocated to indirect expenses.]

(c) STATE GRANTS.—Not more than the following amounts may be appropriated to the Secretary to carry out section 60107—

(1) $17,000,000 for fiscal year 2001, of which $15,000,000 is to be derived from user fees for fiscal year 2001 collected under section 60301 of this title; and

(2) $20,000,000 for the fiscal years 2002 and 2003 of which $18,000,000 is to be derived from user fees for fiscal year 2002 and fiscal year 2003 collected under section 60301 of this title.

(d) OIL SPILL LIABILITY TRUST FUND.—Of the amounts available in the Oil Spill Liability Trust Fund, $8,000,000 shall be transferred to carry out programs authorized in this Act for fiscal year 2001, fiscal year 2002, and fiscal year 2003.

[(d)] *(e)* GRANTS FOR ONE-CALL NOTIFICATION SYSTEMS.—Not more than $——— may be appropriated to the Secretary for the fiscal year ending September 30, 19—, to carry out section 60114(b) of this title. Amounts under this subsection remain available until expended.

[(e)] *(f)* CREDITING APPROPRIATIONS FOR EXPENDITURES FOR TRAINING.—The Secretary may credit to an appropriation authorized under subsection (a) or (b) of this section amounts received from sources other than the Government for reimbursement for expenses incurred by the Secretary in providing training.

[(f)] *(g)* AVAILABILITY OF UNUSED AMOUNTS FOR GRANTS.—

(1) The Secretary shall make available for grants to States amounts appropriated for each of the fiscal years that ended September 30, 1986, and 1987, that have not been expended in making grants under section 60107 of this title.

(2) A grant under this subsection is available to a State that after December 31, 1987—

(A) undertakes a new responsibility under section 60105 of this title; or

(B) implements a one-call damage prevention program established under State law.

(3) This subsection does not authorize a State to receive more than 50 percent of its allowable pipeline safety costs from a grant under this chapter.

(4) A State may receive not more than $75,000 under this subsection.

(5) Amounts under this subsection remain available until expended.

§ 60129. Protection of employees providing pipeline safety information

(a) DISCRIMINATION AGAINST PIPELINE EMPLOYEES.—No pipeline operator or contractor or subcontractor of a pipeline may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Research and Special Programs Administration or any other provision of Federal law relating to pipeline safety under this chapter or any other law of the United States;

(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Administration or any other provision of Federal law relating to pipeline safety under this chapter or any other law of the United States;

(3) testified or is about to testify in such a proceeding; or

(4) assisted or participated or is about to assist or participate in such a proceeding.

(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

(1) FILING AND NOTIFICATION.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 90 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Research and Special Programs Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION; PRELIMINARY ORDER.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary of Labor concludes that there is reasonable

cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) REQUIREMENTS.—

(i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) FINAL ORDER.—

(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee not exceeding $1,000.

(4) REVIEW.—

(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief, including, but not to be limited to, injunctive relief and compensatory damages.

(6) ENFORCEMENT OF ORDER BY PARTIES.—

(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may com-

mence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award costs is appropriate.

(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of a pipeline, contractor or subcontractor who, acting without direction from the pipeline contractor or subcontractor (or such person's agent), deliberately causes a violation of any requirement relating to pipeline safety under this chapter or any other law of the United States.

(e) CONTRACTOR DEFINED.—In this section, the term "contractor" means a company that performs safety-sensitive functions by contract for a pipeline.

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