

PIPELINE SAFETY ACT OF 1995

JUNE 1, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 1323]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1323) to reduce risk to public safety and the environment associated with pipeline transportation of natural gas and hazardous liquids, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pipeline Safety Act of 1995”.

SEC. 2. REFERENCES.

(a) REFERENCES TO TITLE 49.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(b) REFERENCES TO THE SECRETARY OF TRANSPORTATION.—Except as otherwise expressly provided, any reference in this Act to the “Secretary” is a reference to the Secretary of Transportation.

SEC. 3. ANALYSIS OF RISK REDUCTION BENEFITS AND COSTS.

(a) IN GENERAL.—Chapter 601 is amended by adding at the end the following new section:

“§ 60126. Analysis of risk reduction benefits and costs

“(a) REQUIREMENT.—No final significant standard or regulatory requirement issued under section 60101(b), 60102, 60103, 60108, 60109, 60110, or 60113 shall be promulgated unless the Secretary of Transportation—

“(1) certifies that the Secretary has conducted an analysis of risk reduction benefits and costs that is based on objective and unbiased scientific and economic evaluations of all significant and relevant information and risk assessments provided to the Department of Transportation by interested parties or generated by the Department itself relating to the costs, risks, and risk reduction and other benefits addressed by the standard or requirement;

“(2) certifies that the incremental risk reduction or other benefits of any option chosen will be likely to justify, and be reasonably related to, the incremental costs incurred by State, local, and tribal governments and the Federal Government and other public and private citizens; and

“(3) explains why any other options identified or considered by the Secretary were found either—

“(A) to be less cost-effective at achieving a substantially equivalent reduction in risk; or

“(B) to provide less flexibility to State, local, or tribal governments or regulated entities in achieving the otherwise applicable objectives of the standard or requirement, along with a brief explanation of why other options that were identified or considered by the Secretary were found to be less cost-effective or less flexible.

“(b) ELEMENTS OF ANALYSIS.—An analysis of risk reduction benefits or costs prepared by the Secretary for a significant standard or regulatory requirement, at a minimum, shall—

“(1) identify the various regulatory and nonregulatory options that were considered;

“(2) analyze the incremental costs and incremental risk reduction or other benefits associated with each option identified or considered by the Secretary;

“(3) provide any technical data or other information, including the underlying assumptions, upon which the standard or requirement is based; and

“(4) include a statement that places in context the nature and magnitude of the risks to be addressed and the residual risks likely to remain for each option identified or considered.

Costs and benefits shall be quantified to the extent feasible and appropriate and may otherwise be qualitatively described.

“(c) RISK ASSESSMENT DOCUMENTS.—A risk assessment document prepared by the Secretary for a significant standard or regulatory requirement shall, at a minimum and to the extent feasible—

“(1) provide the best estimate for the impacts addressed and a statement of the reasonable range of scientific uncertainties;

“(2) include a statement of any significant substitution risks to public safety or the environment; and

“(3) contain a statement that places in context the nature and magnitude of risks to public safety or the environment.

“(d) STATEMENTS.—The statements referred to in subsections (b)(4) and (c)(3) of this section shall each provide, to the extent feasible, comparisons with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public, as well as other risks, and, where appropriate and meaningful, comparisons of those risks with other similar risks regulated by the Department resulting from comparable activities. In making such comparisons, the Secretary should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks, and the preventability or nonpreventability of risks.

“(e) REVIEW BY STANDARDS COMMITTEE.—

“(1) PEER REVIEW.—For any significant standard or regulatory requirement, the Secretary shall submit any risk assessment documents and cost-benefit analyses (prepared or received by the Secretary) for review by the Technical Pipeline Safety Standards Committee, the Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate, and make them available to the public. The Technical Pipeline Safety Standards Committee and the Hazardous Liquid Pipeline Safety Standards Committee shall function as peer review panels and shall prepare reports, including any recommended options for any significant standard or regulatory requirement and an evaluation of the technical scientific merit of the data and scientific method used for a risk assessment document or cost-benefit analysis. The Committee or Committees shall submit such reports to the Secretary within 90 days after the date of receipt of the documents and analyses from the Secretary.

“(2) RESPONSE OF SECRETARY.—The Secretary shall review the report and recommendations of the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquids Pipeline Safety Standards Committee, or both, as the case may be. Within 90 days after receipt of such report, the Secretary—

“(A) shall submit to the Committee or Committees a written response to all peer review comments and recommended options; and

“(B) may revise the risk assessment document or cost-benefit analysis prior to determining whether the proposed significant standard or regulatory requirement should be promulgated.

“(f) EMERGENCIES.—In the case of an emergency, the Secretary may suspend the application of this section for the duration of the emergency.

“(g) REPORT.—Not later than March 31, 1999, the Secretary shall transmit to Congress a report on the application of the principles of the analyses of risk reduction benefits and costs and risk assessment to this chapter and their effect on pipeline safety.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by adding at the end the following:

“60126. Analysis of risk reduction benefits and costs.

“60127. Risk management.”.

SEC. 4. DEFINITIONS.

(a) IN GENERAL.—Section 60101(a) is amended—

(1) by striking subparagraph (B) of paragraph (21) and inserting the following:

“(B) does not include the gathering of gas, other than gathering through regulated gathering lines, in those rural locations that are outside the limits of any incorporated or unincorporated city, town, or village, or any other designated residential or commercial area (such as a subdivision, business, shopping center, or community development) or any similar populated area which the Secretary of Transportation may define as a nonrural area; but

“(C) includes the movement of gas through regulated gathering lines.”;

and

(2) by adding at the end the following:

“(23) ‘best estimate’ means a scientifically appropriate estimate which is based, to the extent feasible, on one of the following:

“(A) Central estimates of risk using the most plausible assumptions.

“(B) An approach which combines multiple estimates based on different scenarios and weighs the probability of each scenario.

“(C) Any other methodology designed to provide the most unbiased representation of the most plausible level of risk, given the current scientific information available to the Secretary.

“(24) ‘benefits’ means the reasonably identifiable significant health, safety, environmental, social, and economic benefits that are expected to result directly

or indirectly from implementation of a standard, regulatory requirement, or option.

“(25) ‘costs’ means the direct and indirect costs to the United States Government, to State, local, and tribal governments, and to the private sector, wage earners, consumers, and the economy of implementing and complying with a standard, regulatory requirement, or option.

“(26) ‘risk assessment document’ means a document containing—

“(A) an explanation of how hazards associated with a substance, activity, or condition have been identified, quantified, and assessed; and

“(B) a statement by the preparer of the document accepting the findings of the document.

“(27) ‘risk management’ means the systematic application, by the owner or operator of a pipeline facility, of management policies, procedures, finite resources, and practices to the tasks of analyzing, assessing, and controlling risk in order to protect employees, the general public, the environment, and pipeline facilities.

“(28) ‘risk management plan’ means a management plan utilized by a gas or hazardous liquid pipeline facility owner or operator that encompasses risk management.

“(29) ‘significant standard or regulatory requirement’ means any safety or environmental standard or regulatory requirement, or closely related group of safety or environmental standards or regulatory requirements, that is likely to result in annualized compliance costs in excess of \$25,000,000.

“(30) ‘substitution risk’ means a potential risk to public safety or the environment from a significant standard, regulatory requirement, or option designed to decrease other risks.”.

(b) GATHERING LINES.—Section 60101(b)(2) is amended by inserting “, if appropriate,” after “Secretary” the first place it appears.

SEC. 5. GENERAL AUTHORITY.

(a) MINIMUM SAFETY STANDARDS.—Section 60102(a) is amended—

(1) by striking “(a)(1)” and inserting “(a)”;

(2) by striking paragraph (2);

(3) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively;

(4) in paragraph (1), as redesignated by paragraph (3) of this subsection, by striking “transporters of gas and hazardous liquid and to”; and

(5) by striking paragraph (3), as redesignated by paragraph (3) of this subsection, and inserting the following:

“(3) shall include a requirement that all individuals who operate and maintain pipeline facilities must be qualified.

Such qualifications shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits. The operator of the pipeline facility shall ensure that employees who operate and maintain the facility are qualified.”.

(b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—Section 60102(b) is amended—

(1) by striking “section 60103” and inserting “sections 60103 and 60112”;

(2) in paragraph (1)(B) by inserting “safety” after “pipeline”;

(3) by striking “and” at the end of paragraph (3);

(4) in paragraph (4) by striking “contribute to” and inserting “benefit”;

(5) by striking the period at the end of paragraph (4) and inserting “; and”;

and

(6) by adding at the end the following new paragraph:

“(5) the comments and recommendations of the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate.”.

(c) FACILITY OPERATION INFORMATION STANDARDS.—Section 60102(d) is amended in the first sentence—

(1) by inserting after “operating the facility” the following: “as required by the standards prescribed under this chapter”;

(2) by striking “to provide the information” and inserting “to make the information available”; and

(3) by inserting after “to the Secretary and an appropriate State official” the following: “as determined by the Secretary”.

(d) PIPE INVENTORY STANDARDS.—Section 60102(e) is amended in the first sentence—

(1) by striking “and, to the extent the Secretary considers necessary, an operator of a gathering line that is not a regulated gathering line (as defined under section 60101(b)(2) of this title).”; and

(2) by striking “transmission” and inserting “transportation”.

(e) SMART PIGS.—

(1) MINIMUM SAFETY STANDARDS.—Section 60102(f) is amended by striking “(1)” and all that follows through “device.” and inserting the following:

“(1) MINIMUM SAFETY STANDARDS.—The Secretary shall prescribe minimum safety standards requiring that the design and construction of a new gas or hazardous liquid pipeline transmission facility be carried out, to the extent practicable, in a way that accommodates the passage through the facility of an instrumented internal inspection device (commonly referred to as a ‘smart pig’). The Secretary shall also prescribe minimum safety standards requiring that when a segment of an existing gas or hazardous liquid pipeline transmission facility is replaced, to the extent practicable, the replacement segment can accommodate the passage of an instrumented internal inspection device. The Secretary may apply the standard to an existing gas or hazardous liquid facility and require the facility to be changed to allow the facility to be inspected with an instrumented internal inspection device if the basic construction of the facility will accommodate the device.”.

(2) PERIODIC INSPECTIONS.—Section 60102(f) is further amended—

(A) in paragraph (2) by inserting “PERIODIC INSPECTIONS.—” after “(2)”;

(B) in paragraph (2) by inserting after “the Secretary shall prescribe” the following: “, if necessary, additional”; and

(C) by moving paragraph (2) 2 ems to the right.

(f) UPDATING STANDARDS.—Section 60102 is amended by adding at the end the following:

“(f) UPDATING STANDARDS.—The Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as part of the Federal pipeline safety regulatory program.”.

SEC. 6. RISK MANAGEMENT.

Chapter 601 is further amended by adding at the end the following new section:

“§ 60127. Risk management

“(a) RISK MANAGEMENT DEMONSTRATION PROJECT.—The Secretary of Transportation shall carry out a project with voluntary participation by owners and operators of pipeline facilities to demonstrate applications of risk management. The purpose of the project shall be to evaluate the safety and cost effectiveness of such applications.

“(b) EXEMPTION.—During the period of the demonstration project carried out under this section, the Secretary may exempt owners and operators participating in the project from compliance with some or all of the standards and regulatory requirements that would otherwise apply to such owners and operators under this chapter. In addition, the Secretary shall exempt such owners and operators from complying with standards and regulatory requirements promulgated under this chapter during the period of such participation with respect to facilities included in the project.

“(c) REQUIREMENTS.—In carrying out the demonstration project under this section, the Secretary shall—

“(1) invite owners and operators of pipeline facilities to submit risk management plans for timely approval by the Secretary;

“(2) ensure that the approved risk management plans under the project contain measures that are designed to achieve an equivalent or greater overall level of safety than would otherwise be achieved by complying with the standards and regulatory requirements of this chapter; and

“(3) ensure that the project incorporates the following elements:

“(A) collaborative training;

“(B) methods to measure the performance of risk management plans;

“(C) development and application of new technologies;

“(D) promotion of community awareness;

“(E) development of a model to categorize the risks inherent to a selected pipeline facility, considering the location, volume, pressure, and material transported or stored by the facility;

“(F) application of risk assessment and risk management methodologies suitable to the inherent risks determined to exist by the model developed under subparagraph (E);

“(G) development of project elements needed to ensure that owners and operators participating in the project demonstrate that risks are being effectively managed and that risk management plans carried out under the project can be audited;

“(H) a process for making amendments, modifications, and adjustments to approved risk management plans under the project as agreed to by owners and operators carrying out such plans and the Secretary; and

“(I) such other elements as the Secretary and owners and operators participating in the project may agree would further the purposes of this section.

“(d) EMERGENCIES.—In the case of an emergency, the Secretary may suspend or revoke the participation of an owner or operator in the demonstration project carried out under this section.

“(e) REPORT.—Not later than March 31, 1999, the Secretary shall transmit to Congress a report on the results of the demonstration project carried out under this section together with an evaluation of the project and recommendations on whether or not the applications demonstrated under the project should be made a permanent part of the Federal pipeline safety program.”.

SEC. 7. INSPECTION AND MAINTENANCE.

Section 60108 is amended—

(1) in subsection (a)(1) by striking “transporting gas or hazardous liquid or” each place it appears;

(2) in subsection (b)(2) by striking the second sentence;

(3) in the heading to subsection (c) by striking “NAVIGABLE WATERS” and inserting “OTHER WATERS”; and

(4) by striking clause (ii) of subsection (c)(2)(A) and inserting the following: “(ii) any other pipeline facility crossing under, over, or through waters where a substantial likelihood of commercial navigation exists if the Secretary decides that the location of the facility in those waters could pose a hazard to navigation or public safety.”.

SEC. 8. HIGH-DENSITY POPULATION AREAS AND ENVIRONMENTALLY SENSITIVE AREAS.

(a) IDENTIFICATION.—Section 60109(a)(1)(B)(i) is amended by striking “a navigable waterway (as the Secretary defines by regulation)” and inserting “waters where a substantial likelihood of commercial navigation exists”.

(b) UNUSUALLY SENSITIVE AREAS.—Section 60109(b) is amended to read as follows:

“(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 which have been identified as critical wetlands, riverine or estuarine systems, National Parks, wilderness areas, wildlife preservation areas and refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.”.

SEC. 9. EXCESS FLOW VALUES.

Section 60110 is amended—

(1) in subsection (b) by inserting “, if any,” after “circumstances”;

(2) in subsection (b)(4) by inserting “, operating, and maintaining” after “cost of installing”;

(3) in subsection (c)(1)(C) by inserting “, maintenance, and replacement” after “installation”; and

(4) in subsection (e) by inserting after the first sentence the following: “The Secretary may adopt industry accepted performance standards in order to comply with this requirement.”.

SEC. 10. CUSTOMER-OWNED NATURAL GAS SERVICE LINES.

Section 60113 is amended—

(1) by striking “(a) MAINTENANCE INFORMATION.—”; and

(2) by striking subsection (b).

SEC. 11. ONE-CALL NOTIFICATION SYSTEMS.

(a) APPLICATION.—Section 60114(a) is amended—

(1) in paragraph (1) by striking “the system apply to”;

(2) in paragraph (1) by inserting before the period “be covered by a system”;

(3) in each of paragraphs (1), (2), (3), (6), (7), (8), and (9) by striking “a” the first place it appears and inserting “A”;

(4) in paragraph (4) by striking “qualifications” and inserting “Qualifications”; and

(5) in paragraph (5) by striking “procedures” and inserting “Procedures”.

(b) **SANCTIONS.**—Section 60114(a)(9) is further amended by striking “60120, 60122, and 60123” and inserting “60120 and 60122”.

SEC. 12. TECHNICAL SAFETY STANDARDS COMMITTEES.

(a) **PEER REVIEW.**—Section 60115(a) is amended by adding at the end the following: “The Committees shall serve as peer review committees for carrying out this chapter. Peer reviews conducted by the Committees shall be treated for purposes of all Federal laws relating to risk assessment and peer review (including laws approved after the date of the enactment of the Pipeline Safety Act of 1995) as meeting any peer review requirements of such laws.”.

(b) **COMPOSITION AND APPOINTMENT.**—Section 60115(b) is amended—

(1) in paragraph (1) by inserting “or risk management” before the period at the end of the last sentence;

(2) in paragraph (2) by inserting “or risk management” before the period at the end of the last sentence;

(3) in paragraph (3)(B) by striking “4” and inserting “5”;

(4) in paragraph (3)(C) by striking “6” and inserting “5”;

(5) in paragraph (4)(B) by adding at the end the following: “At least 1 of the individuals selected for each committee under paragraph (3)(B) must have education, background, or experience in risk assessment and cost-benefit analysis. The Secretary shall consult with the national organizations representing the owners and operators of pipeline facilities before selecting individuals under paragraph (3)(B).”; and

(6) in paragraph (4)(C) by inserting after the first sentence the following: “At least 1 of the individuals selected for each committee under paragraph (3)(C) must have education, background, or experience in risk assessment and cost-benefit analysis.”.

(c) **COMMITTEE REPORTS.**—Section 60115(c) is amended—

(1) by inserting “or regulatory requirement” after “standard” each place it appears in paragraphs (1), (2), and (3);

(2) in paragraph (1)(A) by inserting after “gas pipeline facilities” the following: “, including the risk assessment document, cost-benefit, and other analyses supporting each proposed standard or regulatory requirement”;

(3) in paragraph (1)(B) by inserting after “hazardous liquid pipeline facilities” the following: “, including the risk assessment document, cost-benefit, and other analyses supporting each proposed standard or regulatory requirement”; and

(4) in paragraph (2)—

(A) by inserting “and supporting analyses” before the first comma in the first sentence;

(B) by inserting “and submit to the Secretary” after “prepare” in the first sentence;

(C) by inserting “cost effectiveness,” after “reasonableness,” in the first sentence;

(D) by inserting “together with recommended actions” before the period at the end of the first sentence; and

(E) by inserting “any recommended actions and” after “including” in the second sentence.

(d) **PROPOSED COMMITTEE STANDARDS AND REGULATORY REQUIREMENTS.**—Section 60115(d)(1) is amended by inserting “or regulatory requirement” after “standard” each place it appears;

(e) **MEETINGS.**—Section 60115(e) is amended by striking “twice” and inserting “4 times”.

(f) **EXPENSES.**—Section 60115(f) is amended—

(1) in the subsection heading by striking “PAY AND”;

(2) by striking the first two sentences; and

(3) by inserting “of a committee under this section” after “A member”.

SEC. 13. PUBLIC EDUCATION PROGRAMS.

Section 60116 is amended—

(1) by striking “person transporting gas” and inserting “owner or operator of a gas pipeline facility”;

(2) by inserting “the use of damage prevention (‘one-call’) systems prior to excavation,” after “educate the public on”; and

(3) by inserting a comma after “gas leaks”.

SEC. 14. ADMINISTRATIVE.

Section 60117 is amended by adding at the end the following:

“(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, and any other entity to further the objectives of this chapter. Such objectives include, but are not limited to, the development, improvement, and promotion of one-call damage prevention programs, research, risk assessment, and mapping.”.

SEC. 15. COMPLIANCE AND WAIVERS.

Section 60118 is amended by adding at the end the following:

“(e) **COMPLIANCE WITH RISK MANAGEMENT PLANS.**—Owners and operators that are participating in the demonstration project under section 60127 shall be considered to be in compliance with any prescribed safety standard or regulatory requirement that is covered by an approved plan under section 60127.”.

SEC. 16. DAMAGE REPORTING.

Section 60123(d)(2) is amended—

- (1) by striking “or” at the end of subparagraph (A);
- (2) by redesignating subparagraph (B) as subparagraph (C); and
- (3) by inserting after subparagraph (A) the following:

“(B) a pipeline facility and does not report the damage promptly to the operator of the pipeline facility and other appropriate authorities; or”.

SEC. 17. ANNUAL REPORTS.

Section 60124 and the item relating to such section in the analysis for chapter 601 are repealed.

SEC. 18. POPULATION ENCROACHMENT.

(a) **IN GENERAL.**—Chapter 601 is amended by inserting after section 60123 the following new section:

“§ 60124. Population encroachment

“(a) **LAND USE RECOMMENDATIONS.**—The Secretary of Transportation shall make available to an appropriate official of each State, as determined by the Secretary, the land use recommendations of the Transportation Research Board’s Special Report 219, entitled ‘Pipelines and Public Safety’.

“(b) **EVALUATION.**—The Secretary shall evaluate the recommendations in the report referred to in subsection (a), determine to what extent the recommendations are being implemented, consider ways to improve implementation of the recommendations, and consider other initiatives to further improve awareness of local planning and zoning entities regarding issues involved with population encroachment in proximity to the rights-of-ways of any interstate gas pipeline facility or interstate hazardous liquid pipeline facility.”.

(b) **CONFORMING AMENDMENT.**—The analysis for chapter 601 is amended by inserting after the item relating to section 60123 the following:

“60124. Population encroachment.”.

SEC. 19. USER FEES.

Within 6 months after the date of the enactment of this Act, the Secretary of Transportation shall transmit to the Congress a report analyzing whether the assessment of pipeline safety user fees solely on the basis of mileage is the most appropriate measure of the resources used by the Department of Transportation in the regulation of pipeline transportation, or whether another basis of assessment might be more appropriate.

SEC. 20. DUMPING WITHIN PIPELINE RIGHTS-OF-WAY.

(a) **AMENDMENT.**—Chapter 601 is amended by adding at the end the following new section:

“§ 60128. Dumping within pipeline rights-of-way

“(a) **PROHIBITION.**—No person shall excavate for the purpose of unauthorized disposal within the right-of-way of an interstate gas pipeline facility or interstate hazardous liquid pipeline facility, or any other limited area in the vicinity of any such interstate pipeline facility established by the Secretary of Transportation, and dispose solid waste therein.

“(b) **DEFINITION.**—For purposes of this section, the term ‘solid waste’ has the meaning given such term in section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).”.

(b) CONFORMING AMENDMENTS.—(1) Sections 60122 and 60123 are amended by striking “or 60118(a)” and inserting in lieu thereof “, 60118(a), or 60128”.

(2) The table of sections of chapter 601 is amended by adding at the end the following new item:

“60128. Dumping within pipeline rights-of-way.”.

SEC. 21. PREVENTION OF DAMAGE TO PIPELINE FACILITIES.

Section 60117(a) is amended by inserting after “and training activities” the following: “and promotional activities relating to prevention of damage to pipeline facilities”.

SEC. 22. TECHNICAL CORRECTIONS.

(a) SECTION 60105.—The heading to section 60105 is amended by inserting “**pipeline safety program**” after “**State**”.

(b) SECTION 60106.—The heading to section 60106 is amended by inserting “**pipeline safety**” after “**State**”.

(c) SECTION 60107.—The heading to section 60107 is amended by inserting “**pipeline safety**” after “**State**”.

(d) CHAPTER ANALYSIS.—The analysis for chapter 601 is amended—

(1) in the item relating to section 60105 by inserting “pipeline safety program” after “State”;

(2) in the item relating to section 60106 by inserting “pipeline safety” after “State”; and

(3) in the item relating to section 60107 by inserting “pipeline safety” after “State”.

SEC. 23. AUTHORIZATIONS OF APPROPRIATION.

(a) GAS AND HAZARDOUS LIQUID.—Section 60125(a) is amended to read as follows:
“(a) GAS AND HAZARDOUS LIQUID.—Not more than the following amounts may be appropriated to the Secretary of Transportation for carrying out this chapter (except sections 60107 and 60114(b)) related to gas and hazardous liquid:

“(1) \$9,936,000 for fiscal year 1996.

“(2) \$10,512,000 for fiscal year 1997.

“(3) \$11,088,000 for fiscal year 1998.

“(4) \$11,664,000 for fiscal year 1999.”.

(b) REPEAL.—Section 60125(b) is repealed.

(c) STATE GRANTS.—Section 60125(c)(1) is amended by adding at the end the following:

“(D) \$10,764,000 for fiscal year 1996.

“(E) \$11,388,000 for fiscal year 1997.

“(F) \$12,012,000 for fiscal year 1998.

“(G) \$12,636,000 for fiscal year 1999.”.

PURPOSE AND SUMMARY

H.R. 1323 reauthorizes the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. These two Acts were combined into Chapter 601 of Title 49 of the United States Code during recodification of laws in 1994.

BACKGROUND AND NEED FOR LEGISLATION

There are approximately 1.9 million miles of underground pipeline in the U.S., made up of approximately 200,000 miles of liquids pipelines; 280,000 miles of gas transmission lines; and 1.5 million miles of gas distribution lines. These lines transport approximately 20 trillion cubic feet of gas per year and over 50% of the petroleum products consumed in the U.S. These pipelines are regulated by the Office of Pipeline Safety (OPS) within the Research and Special Programs Administration of the U.S. Department of Transportation (DOT).

Current Federal pipeline safety regulations cover pipeline design, construction, operation and maintenance, emergency procedures, pipelines testing and inspections, corrosion control, and company

reporting requirements. States are largely preempted from regulating pipeline safety. However, they may assume responsibility for enforcing Federal intrastate pipeline regulations and inspection of interstate pipelines. In practice, States, vary considerably in their authority and capacity to address pipeline safety. By law, States that are certified to implement Federal pipeline regulations may receive as much as 50% of the personnel and equipment costs of a State program. State and local governments may also legislate damage prevention laws and land use controls and may sponsor emergency preparedness planning and training. In addition, States may impose additional standards for the safety regulation of intrastate pipelines and facilities as long as such standards are compatible with the minimum Federal standards.

From 1987 to 1994, there was a total of 44 fatalities related to liquid and natural gas transmission accidents. This is compared to over 42,000 fatalities related to other forms of transportation. Despite this fairly good safety record, both industry and DOT have supported overhauling the current pipeline safety laws to take a more risk-based approach. By taking a risk-based approach to pipeline safety, the threat to public safety, health and the environment posed by pipelines will be reduced and the cost of safety regulation lowered.

Authorization for the Natural Gas Pipeline and Hazardous Liquid Pipeline Safety Acts, now codified as 49 U.S.C. §60101 *et seq.*, expires September 30, 1995. At the hearing held by the Subcommittee on Energy and Power, there was general agreement between DOT and interested parties that these Acts need to be modified before they are reauthorized. Thus, in addition to reauthorizing existing pipeline safety laws, H.R. 1323 adds new risk assessment and risk management elements and makes a number of smaller changes.

RISK ASSESSMENT AND RISK MANAGEMENT

The basic concept underlying the Federal pipeline safety regulatory program is that a pipeline operator is responsible for maintaining the safety of its system while the government is responsible for setting minimum safety standards and ensuring that operators are in compliance with those standards. The current natural gas and liquid pipeline safety laws take the approach of providing regulations to address every perceived risk. In the past, generally, the Pipeline Safety Acts have been modified in each reauthorization to respond to the most recent accident. For example, as a result of accidents in Kansas which occurred on the service lines leading from the street to the home, in 1992 (the most recent reauthorization) Congress added requirements that the DOT begin rulemakings on regulating customer-owned service lines and requiring excess flow valves. As a result of an accident in New York Harbor, Congress also required DOT to do a rulemaking on low pressure hazardous liquid pipelines.

DOT has found it difficult to keep up with all the Congressional mandates. In fact, a significant number of rulemakings DOT was required to perform under both the 1988 and 1992 reauthorizations have yet to be completed by DOT. Both industry and DOT have complained that the concept of just layering new Congressional

mandates on top of old ones, each of which must be applied to all pipelines, ties up a large amount of resources and does not allow DOT or the pipelines to identify and address those risks which pose the greatest threat to the public and the environment. Both DOT and the pipeline industry agree that a "one size fits all" approach to pipeline safety is not cost-effective.

To address this problem, H.R. 1323 leaves in place current pipeline safety regulations, but requires DOT to do a cost benefit analysis before issuing any new significant standards. Significant standards are defined by the bill as any safety or environmental standard or regulatory requirement that is likely to result in compliance costs in excess of \$25,000,000. The risk assessment DOT is required to perform is based largely on H.R. 1022, which passed the House on February 28, 1995 by a vote of 286-141. H.R. 1323 tailors the risk assessment approach taken in H.R. 1022 to the type of activities DOT performs. Use of a risk assessment approach to pipeline safety regulations is intended to give more prominence to the consideration of the relationship between costs and benefits and setting regulatory priorities.

The risk assessment provisions of H.R. 1323 also require the Secretary to create a mechanism to allow for reconsideration of old standards under the new risk assessment requirements. The existing Technical Pipeline Safety Standards Committee and the Hazardous Liquid Pipeline Safety Standards Committee are designated to act as peer review committees. The Peer Review Committees provide expert comment for the record, but the final regulatory decision remains with the Secretary. Finally, the Secretary's existing authority to act in emergencies is not limited.

Risk assessment and risk management are a framework to consolidate and assess all relevant information on safety risks. The outcome of the risk assessment and cost benefit analysis is not determined by this legislation. However, the risk management approach will focus efforts on the most significant and realistic risks which should both increase real safety and cost effectiveness. Information gained from episodic events, such as the recent accident in Edison, New Jersey, is to be fully considered in a risk assessment approach. In addition, risks which pose a low probability of occurrence but have potentially high consequences will be considered. For a more detailed explanation of risk assessment refer to the Commerce Committee report on H.R. 9, House Report 104-33, Feb. 14, 1995.

DEMONSTRATION PROGRAM

In addition to the new risk assessment provisions, H.R. 1323, allows for a risk management demonstration program under which pipeline operators, on a voluntary basis and with DOT approval, may institute pipeline specific risk management programs. This would allow pipeline operators to assess the risks on their pipelines, create pipeline safety programs which are tailored to individual pipelines or pipeline segments, and implement those plans. The concept behind risk management is that each pipeline operator knows his system best and this would give the operator the flexibility to accomplish the goal of pipeline safety while utilizing alter-

native technologies or techniques to those contemplated by current regulations.

To be eligible to participate in the risk management demonstration program, a pipeline operator must submit a plan which contains elements that are designed to provide an equal or greater level of safety than the current regulatory standards. The plan must then be approved by DOT before the operator can implement it. When participating in the demonstration program, pipelines would not be subject to applicable standards or regulatory requirements.

The demonstration program is authorized for four years. The purpose of the demonstration phase is to encourage DOT to approve a variety of risk management approaches to pipeline safety that companies might propose in an effort to gain experience and demonstrate the effectiveness of this alternative to traditional regulation. DOT would be required to report to Congress at the end of the voluntary program. Existing regulations would stay in place during the four year program for pipelines not participating in the voluntary program.

USER FEES

Since 1986, the Federal pipeline safety program has been fully funded by user fees levied on pipeline operators. Those user fees are in turn passed on by the pipelines to consumers of the products transported by the pipelines. Prior to the Edison, New Jersey accident in 1994, pipeline safety user fees averaged about \$45 per mile. Beginning in 1995, those fees went up to \$97 per mile and DOT requested an authorization for FY 96 which would increase those fees to approximately \$110 per mile. Much criticism has been directed at the operation of the Office of Pipeline Safety. The Committee believes that DOT has not shown that the increased fees requested by DOT will improve the management of the Office or measurably enhance the safety of pipelines.

Thus, H.R. 1323 returns to the FY 1995 authorized level and allows the Department of Transportation to collect an additional 6% per year above that level. This represents an average inflation factor plus a modest increase for each year to fund additional responsibilities being placed on DOT by this authorization. By 1999, the last year of the reauthorization, the Office of Pipeline Safety's budget will have increased a total of 24%. The Committee believes that the primary responsibility for pipeline safety rests with the pipeline operator. It is not the role of DOT to replicate every safety activity performed by the pipeline. DOT's role is to make sure that pipeline safety regulations are sufficient to protect the public health and safety and the environment and that pipeline operators are complying with these regulations.

H.R. 1323 also adds a new section requiring DOT to do an analysis of whether the current methodology for allocating user fees among pipelines is the most appropriate. Presently, pipeline user fees are allocated among the various pipelines based on the number of miles of each particular pipeline. Some pipelines have asserted that this methodology does not accurately reflect the use of the Department's resources by each pipeline. A pipeline's share of the cost of safety regulation should be proportional to the amount of re-

sources used. Thus, DOT is directed to analyze whether the current methodology is the most appropriate.

OTHER PROVISIONS

H.R. 1323 makes a number of other amendments to Chapter 601 of Title 49 of the United States Code. It clarifies what areas the Secretary should consider including when describing an area as being unusually sensitive to environmental damage. It also adds a new requirement to make unauthorized dumping on a pipeline right-of-way illegal. In addition, the words, "if any" are reinserted in section 60110(b) of the statute to make it clear that the Secretary has the discretion, within the rulemaking on excess flow valves, to mandate excess flow valves in certain circumstances or to conclude that there were no circumstances under which excess flow valves would be mandated. Similarly, the language requiring the Secretary to do a rulemaking on inspections by internal instrumented inspection devices ("smart pigs") is clarified to make clear that when an existing facility is being replaced only the replacement sections must be modified to accommodate the passage of a smart pig. Finally, the bill removes provisions requiring operator certification and annual reports by DOT, creates a new Federal crime of knowingly and willfully damaging a pipeline facility and not reporting it, and authorizes the Secretary to enter into cooperative agreements with States and others to promote pipeline safety.

HEARINGS

The Subcommittee on Energy and Power held a hearing on reauthorization of Title 49, Chapter 601 of the United States Code on Thursday, March 9, 1995. Testimony was received from: Congressman Bob Franks of New Jersey; George Tenley, Associate Administrator for Pipeline Safety, Department of Transportation; Larry D. Hall, President and Chief Executive Officer, KN Energy Inc., on behalf of the Interstate Natural Gas Association of America; L.C. Thomas, President, BP Oil Pipeline Company, on behalf of the Association of Oil Pipe Lines and the American Petroleum Institute; and Commissioner Bruce B. Ellsworth, New Hampshire Public Utilities Commission, on behalf of the National Association of Regulatory Utility Commissioners.

COMMITTEE CONSIDERATION

The Subcommittee on Energy and Power met on Tuesday, May 16, 1995, and marked up H.R. 1323 and approved the bill for Full Committee consideration as amended. The Full Committee met on Wednesday, May 24, 1995, and marked up H.R. 1323 and ordered it reported to the House, as amended.

ROLL CALL VOTES

Pursuant to clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, following are listed the recorded votes on the motion to report H.R. 1323 and on amendments offered to the measure, including the names of those Members voting for and against.

ROLL CALL VOTE 43

Bill: H.R. 1323, Pipeline Safety Act of 1995.

Amendment: Amendment by Mr. Pallone re: increase the authorization levels for FY 1996 through FY 1999.

Disposition: Not Agreed To, by a roll call vote of 17 ayes to 23 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bileley		X	.....	Mr. Dingell	X	.....	.....
Mr. Moorhead	Mr. Waxman .....		.....	.....
Mr. Fields		X	.....	Mr. Markey	X	.....	.....
Mr. Oxley		X	.....	Mr. Tauzin		X	.....
Mr. Bilirakis		X	.....	Mr. Wyden	X	.....	.....
Mr. Schaefer		X	.....	Mr. Hall		X	.....
Mr. Barton		X	.....	Mr. Bryant	X	.....	.....
Mr. Hastert		X	.....	Mr. Boucher	X	.....	.....
Mr. Upton		X	.....	Mr. Manton	X	.....	.....
Mr. Stearns		X	.....	Mr. Towns	X	.....	.....
Mr. Paxon		X	.....	Mr. Studds .....		.....	.....
Mr. Gillmor		X	.....	Mr. Pallone	X	.....	.....
Mr. Klug	Mr. Brown	X	.....	.....
Mr. Franks		X	.....	Mrs. Lincoln	X	.....	.....
Mr. Greenwood	Mr. Gordon	X	.....	.....
Mr. Crapo		X	.....	Ms. Furse	X	.....	.....
Mr. Cox		X	.....	Mr. Deutsch	X	.....	.....
Mr. Deal		X	.....	Mr. Rush	X	.....	.....
Mr. Burr		X	.....	Ms. Eshoo	X	.....	.....
Mr. Bilbray		X	.....	Mr. Klink	X	.....	.....
Mr. Whitfield		X	.....	Mr. Stupak	X	.....	.....
Mr. Ganske		X	.....	.....		.....	.....
Mr. Frisa		X	.....	.....		.....	.....
Mr. Norwood
Mr. White		X	.....	.....		.....	.....
Mr. Coburn

ROLL CALL VOTE 44

Bill: H.R. 1323, Pipeline Safety Act of 1995.

Amendment: Amendment by Mr. Markey re: peer review.

Disposition: Not Agreed To, by a roll call vote of 19 ayes to 23 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bileley		X	.....	Mr. Dingell	X	.....	.....
Mr. Moorhead	Mr. Waxman	X	.....	.....
Mr. Fields		X	.....	Mr. Markey	X	.....	.....
Mr. Oxley		X	.....	Mr. Tauzin	X	.....	.....
Mr. Bilirakis	Mr. Wyden	X	.....	.....
Mr. Schaefer		X	.....	Mr. Hall	X	.....	.....
Mr. Barton		X	.....	Mr. Bryant	X	.....	.....
Mr. Hastert		X	.....	Mr. Boucher	X	.....	.....
Mr. Upton		X	.....	Mr. Manton	X	.....	.....
Mr. Stearns		X	.....	Mr. Towns	X	.....	.....
Mr. Paxon		X	.....	Mr. Studds .....		.....	.....
Mr. Gillmor		X	.....	Mr. Pallone	X	.....	.....
Mr. Klug	Mr. Brown	X	.....	.....
Mr. Franks		X	.....	Mrs. Lincoln	X	.....	.....
Mr. Greenwood		X	.....	Mr. Gordon	X	.....	.....
Mr. Crapo		X	.....	Ms. Furse	X	.....	.....
Mr. Cox		X	.....	Mr. Deutsch	X	.....	.....
Mr. Deal		X	.....	Mr. Rush	X	.....	.....
Mr. Burr		X	.....	Ms. Eshoo	X	.....	.....
Mr. Bilbray		X	.....	Mr. Klink .....		.....	.....

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Whitfield		X	.....	Mr. Stupak	X	.....	.....
Mr. Ganske		X	.....	.....	.....	.....	.....
Mr. Frisa		X	.....	.....	.....	.....	.....
Mr. Norwood		X	.....	.....	.....	.....	.....
Mr. White		X	.....	.....	.....	.....	.....
Mr. Coburn		X	.....	.....	.....	.....	.....

ROLL CALL VOTE 45

Bill: H.R. 1323, Pipeline Safety Act of 1995.

Motion: Motion by Mr. Bliley to order H.R. 1323 reported to the House, amended.

Disposition: Agreed To, by a roll call vote of 29 ayes to 13 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley	X	.....	.....	Mr. Dingell .....	.....	X	.....
Mr. Moorhead .....	.....	.....	.....	Mr. Waxman .....	.....	X	.....
Mr. Fields	X	.....	.....	Mr. Markey .....	.....	X	.....
Mr. Oxley	X	.....	.....	Mr. Tauzin	X	.....	.....
Mr. Bilirakis .....	.....	.....	.....	Mr. Wyden .....	.....	X	.....
Mr. Schaefer	X	.....	.....	Mr. Hall	X	.....	.....
Mr. Barton	X	.....	.....	Mr. Bryant .....	.....	X	.....
Mr. Hastert	X	.....	.....	Mr. Boucher .....	.....	X	.....
Mr. Upton	X	.....	.....	Mr. Manton .....	.....	X	.....
Mr. Stearns	X	.....	.....	Mr. Towns	X	.....	.....
Mr. Paxon	X	.....	.....	Mr. Studds .....	.....	.....	.....
Mr. Gillmor	X	.....	.....	Mr. Pallone .....	.....	X	.....
Mr. Klug .....	.....	.....	.....	Mr. Brown .....	.....	X	.....
Mr. Franks	X	.....	.....	Mrs. Lincoln	X	.....	.....
Mr. Greenwood	X	.....	.....	Mr. Gordon	X	.....	.....
Mr. Crapo	X	.....	.....	Ms. Furse .....	.....	X	.....
Mr. Cox	X	.....	.....	Mr. Deutsch	X	.....	.....
Mr. Deal	X	.....	.....	Mr. Rush .....	.....	X	.....
Mr. Burr	X	.....	.....	Ms. Eshoo .....	.....	X	.....
Mr. Bilbray	X	.....	.....	Mr. Klink .....	.....	.....	.....
Mr. Whitfield	X	.....	.....	Mr. Stupak .....	.....	X	.....
Mr. Ganske	X	.....	.....	.....	.....	.....	.....
Mr. Frisa	X	.....	.....	.....	.....	.....	.....
Mr. Norwood	X	.....	.....	.....	.....	.....	.....
Mr. White	X	.....	.....	.....	.....	.....	.....
Mr. Coburn	X	.....	.....	.....	.....	.....	.....

VOICE VOTES

Bill: H.R. 1323, Pipeline Safety Act of 1995.

Amendment: Amendment by Mr. Schaefer re: clarify the definition on unusual environmentally sensitive areas.

Disposition: Agree to, by a voice vote.

Amendment: En Bloc Amendment by Mr. Pallone re: eliminate risk assessment and risk management provisions and require DOT to do several new rulemakings.

Disposition: Not agreed to, by a voice vote.

Amendment: Amendment by Mr. Pallone re: inclusion of promotional activities relating to damage prevention

Disposition: Agreed to, by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Energy and Power held

oversight and legislative hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that enactment of H.R. 1323 would result in no additional costs to the Federal Government.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 25, 1995.

Hon. THOMAS J. BLILEY, JR.,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1323, the Pipeline Safety Act of 1995.

Enactment of H.R. 1323 should affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1323.
2. Bill title: Pipeline Safety Act of 1995.
3. Bill status: As ordered reported by the House Committee on Commerce on May 24, 1995.
4. Bill purpose: H.R. 1323 would:

Authorize a total of \$90 million to be appropriated for the gas and hazardous liquid pipeline safety programs and the pipeline safety grant program for fiscal years 1996 through 1999,

Require the Secretary of Transportation to conduct benefit and cost analyses of new pipeline safety standards and regulations which have a compliance cost of greater than \$25 million per year,

Make technical changes to the pipeline safety program,
 Establish a risk management demonstration project,
 Require the Secretary of Transportation to issue a report on
 pipeline user fees,

Impose a criminal penalty on all excavators who do not re-
 port damaged pipeline facilities to the appropriate authorities,
 and

Impose criminal and civil penalties on individuals who exca-
 vate and dispose solid waste on a pipeline right-of-way without
 authorization.

5. Estimated cost to the Federal Government: For purposes of this estimate, CBO assumes that the full amount authorized for pipeline safety programs would be appropriated. Implementing H.R. 1323 would not result in any change in net federal spending because the Department of Transportation collects fees to offset pipeline safety funding. In fiscal year 1995, funding and fees for pipeline safety (excluding oil pollution activities) were \$35 million. If the 1996 appropriation equals the authorization, funding and fees would drop to \$21 million. (The appropriations bill is charged with the level of new funding and any change in the level of fees.) Even though the bill's authorizations are lower than the 1995 funding level, they are above the 1990 through 1994 funding levels of \$10 million to \$17 million.

CBO estimates that the cost of the report on user fees would be insignificant, and that the new civil and criminal penalties that would be established would not result in any significant receipts. If criminal fines are collected, they would be deposited in the Crime Victims Fund and spent the following year.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 1323 could increase penalty collections and spending from the Crime Victims Fund. Therefore, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any increase in direct spending or receipts would be less than \$500,000 per year.

The pay-as-you-go effects of the bill are as follows:

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	0	0	0

7. Estimated cost to State and local governments: Of the \$90 million four-year authorization, \$47 million is for state pipeline safety grants. States would be required to contribute an additional \$47 million to comply with the 50 percent matching requirement.

8. Estimate comparison: None.

9. Previous CBO estimate: On April 7, 1995, CBO transmitted a cost estimate for H.R. 1323, the Pipeline Safety Act of 1995, as ordered reported by the House Committee on Transportation and Infrastructure on April 5, 1995. The two versions of the bill are similar; however, the Commerce Committee version imposes additional civil and criminal penalties and requires a report on user fees.

CBO estimates that these provisions would not have any significant budgetary impact.

10. Estimate prepared by: John Patterson.

11. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SECTION 1. SHORT TITLE

This section establishes the short title of the bill as the Pipeline Safety Act of 1995.

SECTION 2. REFERENCES

This section provides that amendments and references in the bill are to sections and provisions in Title 49, United States Code. The "Secretary" means the Secretary of Transportation.

SECTION 3. ANALYSIS OF RISK REDUCTION BENEFITS AND COSTS

The section adds a new section, 60127, to provide for risk assessment and cost-benefit analysis for new significant standards or regulatory requirements promulgated by the Secretary. The risk assessment analysis contained in Section 3 embraces the core concepts of H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995, as passed by the House. The approach is tailored directly to the pipeline safety program.

Under subsection (a) no final significant standard or regulatory requirement may be promulgated under sections 60101(b), 60102, 60103, 60108, 60109, 60110, or 60113, unless the Secretary certifies that an analysis of risk reduction benefits and costs has been conducted; certifies that the incremental risk reduction or other benefits of the option chosen justifies and is reasonably related to its incremental costs; and explains why other options identified or considered were found to be either less cost-effective or provided less flexibility. Subsection (b) provides that in analyzing risk reduction benefits or costs, the Secretary shall identify the various regulatory and non-regulatory options that were considered; analyze the incremental costs and benefits of the proposed standard or regulatory requirement; provide technical data or other information upon which the standard or regulatory requirement is based; and include a statement that places in context the nature and magnitude of the risk to be addressed and the residual risks likely to remain for each alternative identified or considered.

Subsection (c) provides that risk assessment documents prepared by the Secretary must include certain minimum requirements. These requirements are: the best estimate for impacts addressed and the reasonable range of scientific uncertainties; a statement of any significant substitution risk to public safety and the environment; and a statement that places in context the nature and mag-

nitude of risks to human health, safety, or the environment. Statements that place in context the nature and magnitude of risks to public safety or the environment shall provide comparisons with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public, as well as other risks and comparisons of those risks with other similar risks regulated by the Department are required by subsection (d).

Subsection (e) requires, for any significant standard or regulatory requirement, the Secretary to submit risk assessment documents and cost-benefit analyses for review to the Technical Pipeline Safety Standards Committee, the Hazardous Liquid Pipeline Safety Standards Committee, or both as appropriate. The documents shall also be available for public review. The Secretary must provide a written response to all peer review comments received from the panels and may revise the risk assessment and cost-benefit analysis prior to determining whether a significant standard or regulatory requirement should be promulgated.

The Secretary may suspend analysis of risk reduction benefits and costs for the duration of an emergency. Finally, the Secretary is required to report by March 31, 1999 to Congress on the application of the principles of analyses of risk reduction benefits and costs and risk assessment and their effect on pipeline safety.

SECTION 4. DEFINITIONS

Subsection (a) amends the definition of “transporting gas” to original law prior to recodification. In addition, it defines for the first time such terms as “best estimate”, “benefits”, “costs”, “risk assessment document”, “risk management”, “risk management plan”, and “substitution risk”. “Significant standard or regulatory requirement” is defined as a safety or environmental standard or regulatory requirement or closely related group of standards or requirements that is likely to result in annualized compliance costs of more than \$25 million.

Subsection (b) amends section 60101(b)(2) to provide that the Secretary shall define the term “regulated gathering line” but only if it is appropriate to do so.

SECTION 5. GENERAL AUTHORITY

Section 5 makes a number of changes to Section 60102. For example, section 60102(a) is amended to provide that operators of facilities must be qualified, but not certified, and must be able to recognize and react to abnormal operating conditions that may indicate dangerous situations. Recommendations of the Technical Pipeline Safety Standards Committee or the Hazardous Liquid Pipeline Safety Standards Committee must now be considered in setting minimum safety standards. A provision directing the Secretary to set minimum standards requiring operators of gathering lines that are not regulated to maintain an inventory of appropriate information is struck. Section 60102(f) currently provides that new pipeline facilities must, to the extent practicable, accommodate instrumented internal inspection devices (“smart pigs”). Section 5 of H.R. 1323 clarifies that section to provide that when pipe is being replaced, it is only the replaced section of pipe that must accommo-

date the smart pigs. Finally, Section 5 makes various technical changes to section 60102 and adds a new section 60102(l) to direct the Secretary to update incorporated industry standards, as appropriate and practicable.

SECTION 6. RISK MANAGEMENT

A new section, 60127, is created by Section 6 to provide for a Risk Management Demonstration Project. Under this project, the Secretary shall invite owners and operators of pipelines to submit pipeline safety plans tailored to a particular pipeline or segment of pipeline, and which contain elements designed to achieve an equivalent or greater overall level of safety. During the demonstration project, the Secretary may exempt participating pipelines from compliance with some or all standards and regulations that would otherwise apply, including those promulgated during the demonstration project. The Secretary is allowed to suspend participation in the program in the case of an emergency. Finally, the Secretary is required to submit a report to Congress evaluating the project and recommending whether the project should be made permanent by March 31, 1999.

SECTION 7. INSPECTION AND MAINTENANCE

This section strikes the requirement in section 60108 that the Secretary inspect, every two years, the inspection and maintenance plans each pipeline operator is required to maintain. Instead, the Secretary may determine the frequency of inspections. This section also clarifies that “waters” where underwater pipelines are subject to inspections means areas where a substantial likelihood of commercial navigation exists.

SECTION 8. HIGH DENSITY POPULATION AREAS AND ENVIRONMENTALLY SENSITIVE AREAS

This section conforms the definition of “waters” as in Section 7 above. It also narrows the factors which the Secretary can look at in determining if an area can be described as unusually sensitive to environmental damage. The factors listed in earlier versions of the Act were overly broad.

SECTION 9. EXCESS FLOW VALVES

Section 60110 is expanded by this section by providing that the notification from natural gas operators to customers having lines in which excess flow valves are not required, but can be installed, shall include costs associated with maintenance and replacement as well as installation. The section also provides that the Secretary may adopt industry accepted performance standards for excess flow valves.

SECTION 10. CUSTOMER-OWNED NATURAL GAS SERVICE LINES

This section removes the requirement in section 60113 that the Secretary take actions to promote adoption of measures to improve safety of customer-owned natural gas service lines.

SECTION 11. ONE-CALL NOTIFICATION SYSTEMS

Technical and recodification errors to section 60114 are made by this section. In addition, the requirement that a State one-call program must include criminal penalties in order to receive DOT grants under this section is deleted.

SECTION 12. TECHNICAL SAFETY STANDARDS COMMITTEES

This section provides that the existing Technical Safety Standards Committees shall serve as peer review committees for purposes of all pipeline safety regulations which must undergo risk assessment and peer review. The membership of the committees is modified so that each committee is composed of 5 individuals each from government, industry, and the public. Thus, the number of industry representatives on the Committee is increased from 4 to 5 and the number of representatives from the general public is reduced from 6 to 5. In addition, at least one of the industry and one of the public members must have experience in risk assessment and cost-benefit analysis. All risk assessment documents, cost-benefit, and other analyses supporting proposed standards must be submitted to the Committees for review. Finally the number of meetings held by the Committees is increased from two to four per year.

SECTION 13. PUBLIC EDUCATION PROGRAMS

A technical correction to section 60116 is made by this section. In addition, the public education programs carried out by natural gas owners and operators are expanded to include the use of one-call systems prior to excavation to prevent pipeline damage.

SECTION 14. ADMINISTRATIVE

Section 60117 is amended to authorize the Secretary to enter into grants, cooperative agreements, and other transactions with any person, agency, State and local government, educational institution, or other entity. Further, the Secretary is permitted to provide funding to a one-call program which is not operated by a State.

SECTION 15. COMPLIANCE AND WAIVERS

Section 15 clarifies in section 60118 that owners and operators who utilize an approved risk management plan under the Risk Management Demonstration Project in section 60127 are to be considered in compliance with standards and regulatory requirements covered by the plan.

SECTION 16. DAMAGE REPORTING

Section 16 creates in section 60123 a new Federal crime of knowingly and willfully damaging a pipeline facility and not promptly reporting the damage to the pipeline operator and other appropriate authorities.

SECTION 17. ANNUAL REPORTS

Section 60124 which requires annual reports to be submitted to Congress is repealed.

SECTION 18. POPULATION ENCROACHMENT

A new section, 60124, is created to require the Secretary to make available to State pipeline officials the land use recommendations from the Transportation Research Board's Special Report entitled "Pipelines and Public Safety." This section also directs the Secretary to evaluate those recommendations, determine to what extent they are being implemented, consider ways to improve implementation and consider other initiatives to improve awareness of local planning and zoning entities regarding population encroachment in proximity to rights-of-ways of interstate pipeline facilities.

SECTION 19. USER FEES

Section 19 requires the Secretary of Transportation to analyze whether the current methodology for allocating user fees among pipelines is an accurate measure of the resources used to regulate pipeline safety. This provision is intended to ensure that fees charged are proportional to services rendered.

SECTION 20. DUMPING WITHIN PIPELINE RIGHTS-OF-WAY

Section 20 prohibits unauthorized dumping in pipeline rights-of-way. This section would allow the Secretary to seek the civil or criminal penalties already provided for in the pipeline safety acts for violations of this section.

SECTION 21. PREVENTION OF DAMAGE TO PIPELINE FACILITIES

This new section allows the Secretary undertake promotional activities that help prevent damage to pipeline facilities.

SECTION 22. TECHNICAL CORRECTIONS

Various technical corrections to sections of Chapter 601 are made by this section.

SECTION 23. AUTHORIZATION OF APPROPRIATIONS

Gas and hazardous liquid activities are authorized at the following levels:

\$9,936,000 for Fiscal Year 1996.
 \$10,512,000 for Fiscal Year 1997.
 \$11,088,000 for Fiscal Year 1998.
 \$11,664,000 for Fiscal Year 1999.

DOT is authorized for State Grants:
 \$10,764,000 for Fiscal Year 1996
 \$11,388,000 for Fiscal Year 1997.
 \$12,012,000 for Fiscal Year 1998.
 \$12,636,000 for Fiscal Year 1999.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as re-

ported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 601 OF TITLE 49, UNITED STATES CODE

CHAPTER 601—SAFETY

Sec.

60101. Definitions.

* * * * *

60105. State *pipeline safety program* certifications.

60106. State *pipeline safety* agreements.

60107. State *pipeline safety* grants.

* * * * *

[60124. Annual reports.]

60124. *Population encroachment.*

60125. Authorization of appropriations.

60126. *Analysis of risk reduction benefits and costs.*

60127. *Risk management.*

60128. *Dumping within pipeline rights-of-way.*

§60101. Definitions

(a) In this chapter—

(1) * * *

* * * * *

(21) “transporting gas”—

(A) means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce; but

[(B) does not include gathering gas in a rural area outside a populated area designated by the Secretary as a nonrural area.]

(B) does not include the gathering of gas, other than gathering through regulated gathering lines, in those rural locations that are outside the limits of any incorporated or unincorporated city, town, or village, or any other designated residential or commercial area (such as a subdivision, business, shopping center, or community development) or any similar populated area which the Secretary of Transportation may define as a nonrural area; but

(C) includes the movement of gas through regulated gathering lines.

* * * * *

(23) “best estimate” means a scientifically appropriate estimate which is based, to the extent feasible, on one of the following:

(A) Central estimates of risk using the most plausible assumptions.

(B) An approach which combines multiple estimates based on different scenarios and weighs the probability of each scenario.

(C) Any other methodology designed to provide the most unbiased representation of the most plausible level of risk,

given the current scientific information available to the Secretary.

(24) "benefits" means the reasonably identifiable significant health, safety, environmental, social, and economic benefits that are expected to result directly or indirectly from implementation of a standard, regulatory requirement, or option.

(25) "costs" means the direct and indirect costs to the United States Government, to State, local, and tribal governments, and to the private sector, wage earners, consumers, and the economy of implementing and complying with a standard, regulatory requirement, or option.

(26) "risk assessment document" means a document containing—

(A) an explanation of how hazards associated with a substance, activity, or condition have been identified, quantified, and assessed; and

(B) a statement by the preparer of the document accepting the findings of the document.

(27) "risk management" means the systematic application, by the owner or operator of a pipeline facility, of management policies, procedures, finite resources, and practices to the tasks of analyzing, assessing, and controlling risk in order to protect employees, the general public, the environment, and pipeline facilities.

(28) "risk management plan" means a management plan utilized by a gas or hazardous liquid pipeline facility owner or operator that encompasses risk management.

(29) "significant standard or regulatory requirement" means any safety or environmental standard or regulatory requirement, or closely related group of safety or environmental standards or regulatory requirements, that is likely to result in annualized compliance costs in excess of \$25,000,000.

(30) "substitution risk" means a potential risk to public safety or the environment from a significant standard, regulatory requirement, or option designed to decrease other risks.

*(b) GATHERING LINES.—(1) * * **

(2)(A) Not later than October 24, 1995, the Secretary, if appropriate, shall define by regulation the term "regulated gathering line". In defining the term, the Secretary shall consider factors such as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas or hazardous liquid, as appropriate, in deciding on the types of lines that functionally are gathering but should be regulated under this chapter because of specific physical characteristics.

** * * * **

§60102. General authority

(a) [(1)] MINIMUM SAFETY STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards—

[(A)] (1) apply to **[transporters of gas and hazardous liquid and to] owners and operators of pipeline facilities;**

[(B)] (2) may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities; and

[(C)] shall include a requirement that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to operate and maintain those facilities.

[(2)] As the Secretary considers appropriate, the operator of a pipeline facility may make the certification under paragraph (1)(C) of this subsection. Testing and certification under paragraph (1)(C) shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits.】

(3) shall include a requirement that all individuals who operate and maintain pipeline facilities must be qualified. Such qualifications shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits. The operator of the pipeline facility shall ensure that employees who operate and maintain the facility are qualified.

(b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—A standard prescribed under subsection (a) of this section shall be practicable and designed to meet the need for gas pipeline safety, for safely transporting hazardous liquid, and for protecting the environment. Except as provided in [section 60103] *sections 60103 and 60112* of this title, when prescribing the standard the Secretary shall consider—

- (1) relevant available—
 - (A) gas pipeline safety information; or
 - (B) hazardous liquid pipeline *safety* information;
- (2) the appropriateness of the standard for the particular type of pipeline transportation or facility;
- (3) the reasonableness of the standard; [and]
- (4) the extent to which the standard will [contribute to] *benefit* public safety and the protection of the environment[.]; and
- (5) *the comments and recommendations of the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate.*

* * * * *

(d) FACILITY OPERATION INFORMATION STANDARDS.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility subject to this chapter to maintain, to the extent practicable, information related to operating the facility *as required by the standards prescribed under this chapter* and, when requested, [to provide the information] *to make the information available* to the Secretary and an appropriate State official *as determined by the Secretary*. The information shall include—

- (1) * * *

* * * * *

(e) PIPE INVENTORY STANDARDS.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility sub-

ject to this chapter [and, to the extent the Secretary considers necessary, an operator of a gathering line that is not a regulated gathering line (as defined under section 60101(b)(2) of this title),] to maintain for the Secretary, to the extent practicable, an inventory with appropriate information about the types of pipe used for the [transmission] *transportation* of gas or hazardous liquid, as appropriate, in the operator's system and additional information, including the material's history and the leak history of the pipe. The inventory—

(1) * * *

* * * * *

(f) STANDARDS AS ACCOMMODATING "SMART PIGS".—[(1) The Secretary shall prescribe minimum safety standards requiring that the design and construction of a new gas pipeline transmission facility or hazardous liquid pipeline facility, and the required replacement of an existing gas pipeline transmission facility, hazardous liquid pipeline facility, or equipment, be carried out, to the extent practicable, in a way that accommodates the passage through the facility of an instrumented internal inspection device (commonly referred to as a "smart pig"). The Secretary may apply the standard to an existing gas or hazardous liquid transmission facility and require the facility to be changed to allow the facility to be inspected with an instrumented internal inspection device if the basic construction of the facility will accommodate the device.]

(1) *MINIMUM SAFETY STANDARDS.*—*The Secretary shall prescribe minimum safety standards requiring that the design and construction of a new gas or hazardous liquid pipeline transmission facility be carried out, to the extent practicable, in a way that accommodates the passage through the facility of an instrumented internal inspection device (commonly referred to as a 'smart pig'). The Secretary shall also prescribe minimum safety standards requiring that when a segment of an existing gas or hazardous liquid pipeline transmission facility is replaced, to the extent practicable, the replacement segment can accommodate the passage of an instrumented internal inspection device. The Secretary may apply the standard to an existing gas or hazardous liquid facility and require the facility to be changed to allow the facility to be inspected with an instrumented internal inspection device if the basic construction of the facility will accommodate the device.*

(2) *PERIODIC INSPECTIONS.*—*Not later than October 24, 1995, the Secretary shall prescribe, if necessary, additional regulations requiring the periodic inspection of each pipeline the operator of the pipeline identifies under section 60109 of this title. The regulations shall include any circumstances under which an inspection shall be conducted with an instrumented internal inspection device and, if the device is not required, use of an inspection method that is at least as effective as using the device in providing for the safety of the pipeline.*

* * * * *

(1) *UPDATING STANDARDS.*—*The Secretary shall, to the extent appropriate and practicable, update incorporated industry standards*

that have been adopted as part of the Federal pipeline safety regulatory program.

* * * * *

§ 60105. State *pipeline safety* program certifications

(a) * * *

* * * * *

§ 60106. State *pipeline safety* agreements

(a) * * *

* * * * *

§ 60107. State *pipeline safety* grants

(a) * * *

* * * * *

§ 60108. Inspection and maintenance

(a) PLANS.—(1) Each person [transporting gas or hazardous liquid or] owning or operating an intrastate gas pipeline facility or hazardous liquid pipeline facility shall carry out a current written plan (including any changes) for inspection and maintenance of each facility used in the transportation and owned or operated by the person. A copy of the plan shall be kept at any office of the person the Secretary of Transportation considers appropriate. The Secretary also may require a person [transporting gas or hazardous liquid or] owning or operating a pipeline facility subject to this chapter to file a plan for inspection and maintenance for approval.

(b) INSPECTION AND TESTING.—(1) * * *

* * * * *

(2) To the extent and in amounts provided in advance in an appropriation law, the Secretary shall decide on the frequency of inspection under paragraph (1) of this subsection. [However, an inspection must occur at least once every 2 years.] The Secretary may reduce the frequency of an inspection of a master meter system.

(c) PIPELINE FACILITIES OFFSHORE AND IN [NAVIGABLE WATERS] OTHER WATERS.—(1) In this subsection—

(A) “abandoned” means permanently removed from service.

(B) “pipeline facility” includes an underwater abandoned pipeline facility.

(C) if a pipeline facility has no operator, the most recent operator of the facility is deemed to be the operator of the facility.

(2)(A) Not later than May 16, 1993, on the basis of experience with the inspections under section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1968 or section 203(J)(1)(A) of the Hazardous Liquid Pipeline Safety Act of 1979, as appropriate, and any other information available to the Secretary, the Secretary shall establish a mandatory, systematic, and, where appropriate, periodic inspection program of—

(i) all offshore pipeline facilities; and

[(ii) any other pipeline facility crossing under, over, or through navigable waters (as defined by the Secretary) if the Secretary decides that the location of the facility in those navigable waters could pose a hazard to navigation or public safety.]

(ii) any other pipeline facility crossing under, over, or through waters where a substantial likelihood of commercial navigation exists if the Secretary decides that the location of the facility in those waters could pose a hazard to navigation or public safety.

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

(a) IDENTIFICATION REQUIREMENTS.—Not later than October 24, 1994, the Secretary of Transportation shall prescribe regulations 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 [a navigable waterway (as the Secretary defines by regulation)] *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

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

(a) * * *

[(b) AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describing an area that is unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, the Secretary shall consider including—

[(1) earthquake zones and areas subject to landslides and other substantial ground movements;

[(2) areas of likely ground water contamination if a hazardous liquid pipeline facility ruptures;

[(3) freshwater lakes, rivers, and waterways; and

[(4) river deltas and other areas subject to soil erosion or subsidence from flooding or other water action where a hazardous liquid pipeline facility is likely to become exposed or undermined.]

(b) AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describing areas that are unusually sensitive to environmental dam-

age 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 which have been identified as critical wetlands, riverine or estuarine systems, National Parks, wilderness areas, wildlife preservation areas and refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.

* * * * *

§60110. Excess flow valves

(a) APPLICATION.—This section applies only to—

(1) * * *

* * * * *

(b) INSTALLATION REQUIREMENTS AND CONSIDERATIONS.—Not later than April 24, 1994, the Secretary of Transportation shall prescribe regulations on the circumstances, *if any*, under which an operator of a natural gas distribution system must install excess flow valves in the system. The Secretary shall consider—

- (1) the system design pressure;
- (2) the system operating pressure;
- (3) the types of customers to which the distribution system supplies gas, including hospitals, schools, and commercial enterprises;
- (4) the technical feasibility and cost of installing, *operating, and maintaining* the valve;

* * * * *

(c) NOTIFICATION OF AVAILABILITY.—(1) Not later than October 24, 1994, the Secretary shall prescribe regulations requiring an operator of a natural gas distribution system to notify in writing its customers having lines in which excess flow valves are not required by law but can be installed according to the standards prescribed under subsection (e) of this section, of—

- (A) the availability of excess flow valves for installation in the system;
- (B) safety benefits to be derived from installation; and
- (C) costs associated with installation, *maintenance, and replacement*.

* * * * *

(e) PERFORMANCE STANDARDS.—Not later than April 24, 1994, the Secretary shall develop standards for the performance of excess flow valves used to protect lines in a natural gas distribution system. *The Secretary may adopt industry accepted performance standards in order to comply with this requirement.* The standards shall be incorporated into regulations the Secretary prescribes under this section. All excess flow valves shall be installed according to the standards.

* * * * *

§ 60113. Customer-owned natural gas service lines

[(a) MAINTENANCE INFORMATION.—]Not later than October 24, 1993, the Secretary of Transportation shall prescribe regulations requiring an operator of a natural gas distribution pipeline that does not maintain customer-owned natural gas service lines up to building walls to advise its customers of—

(1) * * *

* * * * *

[(b) ACTIONS TO PROMOTE SAFETY.—]Not later than one year after submitting the report required under section 115(b) of the Pipeline Safety Act of 1992 (Public Law 102–508, 106 Stat. 3296), the Secretary, considering the report and in cooperation and coordination with appropriate State and local authorities, shall take appropriate action to promote the adoption of measures to improve the safety of customer-owned natural gas service lines.]

§ 60114. One-call notification systems

(a) MINIMUM REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations providing minimum requirements for establishing and operating a one-call notification system for a State to adopt that will notify an operator of a pipeline facility of activity in the vicinity of the facility that could threaten the safety of the facility. The regulations shall include the following:

(1) [a] A requirement that [the system apply to] all areas of the State containing underground pipeline facilities *be covered by a system*.

(2) [a] A requirement that a person intending to engage in an activity the Secretary decides could cause physical damage to an underground facility must contact the appropriate system to establish if there are underground facilities present in the area of the intended activity.

(3) [a] A requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.

(4) [qualifications] *Qualifications* for an operator of a facility, a private contractor, or a State or local authority to operate a system.

(5) [procedures] *Procedures* for advertisement and notice of the availability of a system.

(6) [a] A requirement about the information to be provided by a person contacting the system under clause (2) of this subsection.

(7) [a] A requirement for the response of the operator of the system and of the facility after they are contacted by an individual under this subsection.

(8) [a] A requirement that each State decide whether the system will be toll free.

(9) [a] A requirement for sanctions substantially the same as provided under sections [60120, 60122, and 60123] *60120 and 60122* of this title.

* * * * *

§60115. Technical safety standards committees

(a) ORGANIZATION.—The Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee are committees in the Department of Transportation. *The Committees shall serve as peer review committees for carrying out this chapter. Peer reviews conducted by the Committees shall be treated for purposes of all Federal laws relating to risk assessment and peer review (including laws approved after the date of the enactment of the Pipeline Safety Act of 1995) as meeting any peer review requirements of such laws.*

(b) COMPOSITION AND APPOINTMENT.—(1) The Technical Pipeline Safety Standards Committee is composed of 15 members appointed by the Secretary of Transportation after consulting with public and private agencies concerned with the technical aspect of transporting gas or operating a gas pipeline facility. Each member must be experienced in the safety regulation of transporting gas and of gas pipeline facilities or technically qualified, by training, experience, or knowledge in at least one field of engineering applicable to transporting gas or operating a gas pipeline facility, to evaluate gas pipeline safety standards *or risk management*.

(2) The Technical Hazardous Liquid Pipeline Safety Standards Committee is composed of 15 members appointed by the Secretary after consulting with public and private agencies concerned with the technical aspect of transporting hazardous liquid or operating a hazardous liquid pipeline facility. Each member must be experienced in the safety regulation of transporting hazardous liquid and of hazardous liquid pipeline facilities or technically qualified, by training, experience, or knowledge in at least one field of engineering applicable to transporting hazardous liquid or operating a hazardous liquid pipeline facility, to evaluate hazardous liquid pipeline safety standards *or risk management*.

(3) The members of each committee are appointed as follows:

(A) 5 individuals selected from departments, agencies, and instrumentalities of the United States Government and of the States.

(B) **[4]** 5 individuals selected from the natural gas or hazardous liquid industry, as appropriate, after consulting with industry representatives.

(C) **[6]** 5 individuals selected from the general public.

(4)(A) Two of the individuals selected for each committee under paragraph (3)(A) of this subsection must be State commissioners. The Secretary shall consult with the national organization of State commissions (referred to in section 10344(f) of this title) before selecting those 2 individuals.

(B) At least 3 of the individuals selected for each committee under paragraph (3)(B) of this subsection must be currently in the active operation of natural gas pipelines or hazardous liquid pipeline facilities, as appropriate. *At least 1 of the individuals selected for each committee under paragraph (3)(B) must have education, background, or experience in risk assessment and cost-benefit analysis. The Secretary shall consult with the national organizations representing the owners and operators of pipeline facilities before selecting individuals under paragraph (3)(B).*

(C) Two of the individuals selected for each committee under paragraph (3)(C) of this subsection must have education, background, or experience in environmental protection or public safety. *At least 1 of the individuals selected for each committee under paragraph (3)(C) must have education, background, or experience in risk assessment and cost-benefit analysis.* At least one individual selected for each committee under paragraph (3)(C) may not have a financial interest in the pipeline, petroleum, or natural gas industries.

(c) COMMITTEE REPORTS ON PROPOSED STANDARDS.—(1) The Secretary shall give to—

(A) the Technical Pipeline Safety Standards Committee each standard *or regulatory requirement* proposed under this chapter for transporting gas and for gas pipeline facilities, *including the risk assessment document, cost-benefit, and other analyses supporting each proposed standard or regulatory requirement*; and

(B) the Technical Hazardous Liquid Pipeline Safety Standards Committee each standard *or regulatory requirement* proposed under this chapter for transporting hazardous liquid and for hazardous liquid pipeline facilities, *including the risk assessment document, cost-benefit, and other analyses supporting each proposed standard or regulatory requirement*.

(2) Not later than 90 days after receiving the proposed standard *or regulatory requirement and supporting analyses*, the appropriate committee shall prepare *and submit to the Secretary* a report on the technical feasibility, reasonableness, *cost effectiveness*, and practicability of the proposed standard *or regulatory requirement together with recommended actions*. The Secretary shall publish each report, including *any recommended actions and minority views*. The report if timely made is part of the proceeding for prescribing the standard *or regulatory requirement*. The Secretary is not bound by the conclusions of the committee. However, if the Secretary rejects the conclusions of the committee, the Secretary shall publish the reasons.

(3) The Secretary may prescribe a standard *or regulatory requirement* after the end of the 90-day period.

(d) PROPOSED COMMITTEE STANDARDS AND POLICY DEVELOPMENT RECOMMENDATIONS.—(1) The Technical Pipeline Safety Standards Committee may propose to the Secretary a safety standard *or regulatory requirement* for transporting gas and for gas pipeline facilities. The Technical Hazardous Liquid Pipeline Safety Standards Committee may propose to the Secretary a safety standard *or regulatory requirement* for transporting hazardous liquid and for hazardous liquid pipeline facilities.

(e) MEETINGS.—Each committee shall meet with the Secretary at least **[twice]** *4 times* annually. Each committee proceeding shall be recorded. The record of the proceeding shall be available to the public.

(f) **[PAY AND]** EXPENSES.—**[The Secretary may establish the pay for each member of a committee for each day (including travel time) when performing duties of the committee. However, a member may not be paid more than the daily equivalent of the maximum annual rate of basic pay payable under section 5376 of title**

5.] A member of a committee under this section is entitled to expenses under section 5703 of title 5. A payment under this subsection does not make a member an officer or employee of the Government. This subsection does not apply to members regularly employed by the Government.

§60116. Public education programs

Under regulations the Secretary of Transportation prescribes, each [person transporting gas] owner or operator of a gas pipeline facility shall carry out a program to educate the public on the use of damage prevention (“one-call”) systems 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.

§60117. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of Transportation may conduct investigations, make reports, issue subpoenas, 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.

* * * * *

(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, and any other entity to further the objectives of this chapter. Such objectives include, but are not limited to, the development, improvement, and promotion of one-call damage prevention programs, research, risk assessment, and mapping.

§60118. Compliance and waivers

(a) * * *

* * * * *

(e) COMPLIANCE WITH RISK MANAGEMENT PLANS.—Owners and operators that are participating in the demonstration project under section 60127 shall be considered to be in compliance with any prescribed safety standard or regulatory requirement that is covered by an approved plan under section 60127.

* * * * *

§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) [or 60118(a)], 60118(a), or 60128 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 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.

* * * * *

§60123. Criminal penalties

(a) GENERAL PENALTY.—A person knowingly and willfully violating section 60114(c) **[or 60118(a)]**, *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.

* * * * *

(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—

(1) 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; **[or]**

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

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

§60124. Annual reports

[(a) SUBMISSION AND CONTENTS.]—The Secretary of Transportation shall submit to Congress not later than August 15 of each year a report on carrying out this chapter for the prior calendar year for gas and a report on carrying out this chapter for the prior calendar year for hazardous liquid. Each report shall include the following information about the prior year for gas or hazardous liquid, as appropriate:

[(1) a thorough compilation of the leak repairs, accidents, and casualties and a statement of cause when investigated and established by the National Transportation Safety Board.

[(2) a list of applicable pipeline safety standards prescribed under this chapter including identification of standards prescribed during the year.

[(3) a summary of the reasons for each waiver granted under section 60118(c) and (d) of this title.

[(4) an evaluation of the degree of compliance with applicable safety standards, including a list of enforcement actions

and compromises of alleged violations by location and company name.

[(5) a summary of outstanding problems in carrying out this chapter, in order of priority.

[(6) an analysis and evaluation of—

[(A) research activities, including their policy implications, completed as a result of the United States Government and private sponsorship; and

[(B) technological progress in safety achieved.

[(7) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter.

[(8) the extent to which technical information was distributed to the scientific community and consumer-oriented information was made available to the public.

[(9) a compilation of certifications filed under section 60105 of this title that were—

[(A) in effect; or

[(B) rejected in any part by the Secretary and a summary of the reasons for each rejection.

[(10) a compilation of agreements made under section 60106 of this title that were—

[(A) in effect; or

[(B) ended in any part by the Secretary and a summary of the reasons for ending each agreement.

[(11) a description of the number and qualifications of State pipeline safety inspectors in each State for which a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect and the number and qualifications of inspectors the Secretary recommends for that State.

[(12) recommendations for legislation the Secretary considers necessary—

[(A) to promote cooperation among the States in improving—

[(i) gas pipeline safety; or

[(ii) hazardous liquid pipeline safety programs; and

[(B) to strengthen the national gas pipeline safety program.

[(b) SUBMISSION OF ONE REPORT.—The Secretary may submit one report to carry out subsection (a) of this section.]

§60124. Population encroachment

(a) *LAND USE RECOMMENDATIONS.*—The Secretary of Transportation shall make available to an appropriate official of each State, as determined by the Secretary, the land use recommendations of the Transportation Research Board's Special Report 219, entitled "Pipelines and Public Safety".

(b) *EVALUATION.*—The Secretary shall evaluate the recommendations in the report referred to in subsection (a), determine to what extent the recommendations are being implemented, consider ways to improve implementation of the recommendations, and consider other initiatives to further improve awareness of local planning and zoning entities regarding issues involved with population encroachment in proximity to the rights-of-ways of any interstate gas pipeline facility or interstate hazardous liquid pipeline facility.

§ 60125. Authorization of appropriations

[(a) GAS.—Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter (except sections 60107 and 60114(b)) related to gas:

[(1) \$6,857,000 for the fiscal year ending September 30, 1993.

[(2) \$7,000,000 for the fiscal year ending September 30, 1994.

[(3) \$7,500,000 for the fiscal year ending September 30, 1995.]

(a) *GAS AND HAZARDOUS LIQUID.*—*Not more than the following amounts may be appropriated to the Secretary of Transportation for carrying out this chapter (except sections 60107 and 60114(b)) related to gas and hazardous liquid:*

(1) *\$9,936,000 for fiscal year 1996.*

(2) *\$10,512,000 for fiscal year 1997.*

(3) *\$11,088,000 for fiscal year 1998.*

(4) *\$11,664,000 for fiscal year 1999.*

[(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) *\$10,764,000 for fiscal year 1996.*

(E) *\$11,388,000 for fiscal year 1997.*

(F) *\$12,012,000 for fiscal year 1998.*

(G) *\$12,636,000 for fiscal year 1999.*

* * * * *

§ 60126. Analysis of risk reduction benefits and costs

(a) *REQUIREMENT.*—*No final significant standard or regulatory requirement issued under section 60101(b), 60102, 60103, 60108, 60109, 60110, or 60113 shall be promulgated unless the Secretary of Transportation—*

(1) certifies that the Secretary has conducted an analysis of risk reduction benefits and costs that is based on objective and unbiased scientific and economic evaluations of all significant and relevant information and risk assessments provided to the Department of Transportation by interested parties or generated by the Department itself relating to the costs, risks, and risk reduction and other benefits addressed by the standard or requirement;

(2) certifies that the incremental risk reduction or other benefits of any option chosen will be likely to justify, and be reasonably related to, the incremental costs incurred by State, local, and tribal governments and the Federal Government and other public and private citizens; and

(3) explains why any other options identified or considered by the Secretary were found either—

(A) to be less cost-effective at achieving a substantially equivalent reduction in risk; or

(B) to provide less flexibility to State, local, or tribal governments or regulated entities in achieving the otherwise applicable objectives of the standard or requirement, along with a brief explanation of why other options that were identified or considered by the Secretary were found to be less cost-effective or less flexible.

(b) *ELEMENTS OF ANALYSIS.*—An analysis of risk reduction benefits or costs prepared by the Secretary for a significant standard or regulatory requirement, at a minimum, shall—

(1) identify the various regulatory and nonregulatory options that were considered;

(2) analyze the incremental costs and incremental risk reduction or other benefits associated with each option identified or considered by the Secretary;

(3) provide any technical data or other information, including the underlying assumptions, upon which the standard or requirement is based; and

(4) include a statement that places in context the nature and magnitude of the risks to be addressed and the residual risks likely to remain for each option identified or considered.

Costs and benefits shall be quantified to the extent feasible and appropriate and may otherwise be qualitatively described.

(c) *RISK ASSESSMENT DOCUMENTS.*—A risk assessment document prepared by the Secretary for a significant standard or regulatory requirement shall, at a minimum and to the extent feasible—

(1) provide the best estimate for the impacts addressed and a statement of the reasonable range of scientific uncertainties;

(2) include a statement of any significant substitution risks to public safety or the environment; and

(3) contain a statement that places in context the nature and magnitude of risks to public safety or the environment.

(d) *STATEMENTS.*—The statements referred to in subsections (b)(4) and (c)(3) of this section shall each provide, to the extent feasible, comparisons with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public, as well as other risks, and, where appropriate and meaningful, comparisons of those risks with other similar risks regulated by the Department resulting from comparable activities. In making such comparisons, the Secretary should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks, and the preventability or nonpreventability of risks.

(e) *REVIEW BY STANDARDS COMMITTEE.*—

(1) *PEER REVIEW.*—For any significant standard or regulatory requirement, the Secretary shall submit any risk assessment documents and cost-benefit analyses (prepared or received by

the Secretary) for review by the Technical Pipeline Safety Standards Committee, the Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate, and make them available to the public. The Technical Pipeline Safety Standards Committee and the Hazardous Liquid Pipeline Safety Standards Committee shall function as peer review panels and shall prepare reports, including any recommended options for any significant standard or regulatory requirement and an evaluation of the technical scientific merit of the data and scientific method used for a risk assessment document or cost-benefit analysis. The Committee or Committees shall submit such reports to the Secretary within 90 days after the date of receipt of the documents and analyses from the Secretary.

(2) *RESPONSE OF SECRETARY.*—The Secretary shall review the report and recommendations of the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquids Pipeline Safety Standards Committee, or both, as the case may be. Within 90 days after receipt of such report, the Secretary—

(A) shall submit to the Committee or Committees a written response to all peer review comments and recommended options; and

(B) may revise the risk assessment document or cost-benefit analysis prior to determining whether the proposed significant standard or regulatory requirement should be promulgated.

(f) *EMERGENCIES.*—In the case of an emergency, the Secretary may suspend the application of this section for the duration of the emergency.

(g) *REPORT.*—Not later than March 31, 1999, the Secretary shall transmit to Congress a report on the application of the principles of the analyses of risk reduction benefits and costs and risk assessment to this chapter and their effect on pipeline safety.

§60127. Risk management

(a) *RISK MANAGEMENT DEMONSTRATION PROJECT.*—The Secretary of Transportation shall carry out a project with voluntary participation by owners and operators of pipeline facilities to demonstrate applications of risk management. The purpose of the project shall be to evaluate the safety and cost effectiveness of such applications.

(b) *EXEMPTION.*—During the period of the demonstration project carried out under this section, the Secretary may exempt owners and operators participating in the project from compliance with some or all of the standards and regulatory requirements that would otherwise apply to such owners and operators under this chapter. In addition, the Secretary shall exempt such owners and operators from complying with standards and regulatory requirements promulgated under this chapter during the period of such participation with respect to facilities included in the project.

(c) *REQUIREMENTS.*—In carrying out the demonstration project under this section, the Secretary shall—

(1) invite owners and operators of pipeline facilities to submit risk management plans for timely approval by the Secretary;

(2) ensure that the approved risk management plans under the project contain measures that are designed to achieve an

equivalent or greater overall level of safety than would otherwise be achieved by complying with the standards and regulatory requirements of this chapter; and

(3) ensure that the project incorporates the following elements:

(A) collaborative training;

(B) methods to measure the performance of risk management plans;

(C) development and application of new technologies;

(D) promotion of community awareness;

(E) development of a model to categorize the risks inherent to a selected pipeline facility, considering the location, volume, pressure, and material transported or stored by the facility;

(F) application of risk assessment and risk management methodologies suitable to the inherent risks determined to exist by the model developed under subparagraph (E);

(G) development of project elements needed to ensure that owners and operators participating in the project demonstrate that risks are being effectively managed and that risk management plans carried out under the project can be audited;

(H) a process for making amendments, modifications, and adjustments to approved risk management plans under the project as agreed to by owners and operators carrying out such plans and the Secretary; and

(I) such other elements as the Secretary and owners and operators participating in the project may agree would further the purposes of this section.

(d) EMERGENCIES.—In the case of an emergency, the Secretary may suspend or revoke the participation of an owner or operator in the demonstration project carried out under this section.

(e) REPORT.—Not later than March 31, 1999, the Secretary shall transmit to Congress a report on the results of the demonstration project carried out under this section together with an evaluation of the project and recommendations on whether or not the applications demonstrated under the project should be made a permanent part of the Federal pipeline safety program.

§60128. Dumping within pipeline rights-of-way

(a) PROHIBITION.—No person shall excavate for the purpose of unauthorized disposal within the right-of-way of an interstate gas pipeline facility or interstate hazardous liquid pipeline facility, or any other limited area in the vicinity of any such interstate pipeline facility established by the Secretary of Transportation, and dispose solid waste therein.

(b) DEFINITION.—For purposes of this section, the term “solid waste” has the meaning given such term in section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).

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DISSENTING VIEWS

Despite its title, H.R. 1323, the "Pipeline Safety Act of 1995", is likely to undermine the current level of protection of the public health and safety provided by the Department of Transportation's pipeline safety program. In the name of greater government "efficiency," H.R. 1323 diverts the program away from the existing commonsense approach based on inspection and enforcement. In its place, the bill substitutes the majority's now familiar alternative to reasonable regulation—unnecessary risk analysis, inadequate budgets, and cost-benefit requirements that undermine the very premises on which our public health and safety statutes are based.

The risk assessment and cost-benefit mechanisms borrowed from H.R. 1022 are particularly inappropriate to pipeline safety. The dangers and consequences of natural gas explosions or leaking oil pipelines are not speculative, and do not turn on actuarial tables or models predicting latent health effects. There is nothing novel about the dangers that degraded, compromised pipelines pose to public health, the environment, and property values. The consequences are obvious to anyone with even a passing knowledge of the many spectacular natural gas accidents of both recent and distant memory—accidents like Cleveland's in the 1940's, where hundreds of businesses and homes were damaged, or the Edison, New Jersey natural gas explosion of 1994, which destroyed an apartment complex and threatened hundreds of lives, or the 1993 Colonial Pipeline oil leak in Fairfax County, Virginia, which caused extensive property and environmental damage.

The risk assessment procedures imposed by H.R. 1323 will tie the Department of Transportation's pipeline safety program in knots. At the same time as the agency's dollar resources are being cut, the burden on agency personnel to build useless models and risk assessment analyses is being increased. As a result, the Department's shrinking resources will be taken away from inspection and enforcement, the only practical tools for protecting public health. Instead, an increased percentage of the Department's budget will be devoted to analyzing whether a threat to public health exists. This is not a question requiring further study; a cursory reading of old newspaper accounts confirms the risks and the consequences of pipeline accidents.

Even more offensively, the bill demotes protection of human life to a function of cost-benefit analysis. Under the legislation, the Department of Transportation is barred from issuing regulations to protect public health and safety unless it shows that the costs are justified by the benefits. The burden of proof is on the Department.

The effect of this legislation is to place a higher premium on practical information gathered in the field—what is the status of a particular pipeline, what sort of maintenance is needed to ensure its safety? This might not be all bad if the agency's resources were

being increased to take into account the new burdens imposed by the bill. But instead, the agency will be unable to obtain this information because the bulk of its resources will be devoted to risk assessment exercises. Without that information, it will be unable to prove that costs to industry are likely to be justified by benefits to public health and the environment. As a result, it cannot issue regulations. And by authorizing few dollars for the agency and requiring it to devote a higher percentage of its budget to analysis, the bill decreases the funds available for inspections and enforcement.

This legislation may appear to be a marvelous development for industry, and it is no surprise that elements of industry had a heavy role in its drafting. In the short run, it will save industry money, through reduced user fees.

In the long run, however, the costs to industry and to those who supported this legislation are likely to be quite high. Saving money is an important goal, but it is no substitute for the far more important objective of saving lives. Today's self-serving theoretical arguments about the virtues of models and analysis will mean little to the apartment dweller whose building is blown up, to the business owner whose property is damaged, or to the homeowner whose property value is reduced because of pollution due to leaking pipelines.

JOHN D. DINGELL.
EDWARD J. MARKEY.
E. TOWNS.
FRANK PALLONE, Jr.
SHERROD BROWN.
RON KLINK.
BART STUPAK.
ELIZABETH FURSE.

ADDITIONAL DISSENTING VIEWS OF MR. MARKEY

H.R. 1323, as approved by the Committee, allows corporate insiders and lobbyists to serve on the peer review panels that will be empowered to review all proposed Department of Transportation (DOT) pipeline safety regulations. The peer review provisions of this bill are exactly the opposite of what we should be trying to do with the scientific peer review process. Allowing individuals with financial or other conflicts-of-interest to serve as peer reviewers degrades the credibility of peer reviews and calls into question the fundamental scientific and technical credibility of the entire process.

The bill would transform two existing pipeline safety policy advisory committees to the DOT (the Technical Hazards Liquid Pipeline Safety Committee and the Technical Pipeline Safety Standards Committee) into peer review panels. These industry-dominated committees will be responsible for reviewing all DOT pipeline safety regulations, preparing reports on “any significant standard or regulatory requirement” proposed by the Department and providing “an evaluation of the technical scientific merit of the data and scientific method used for a risk assessment document or cost-benefit analysis.” The Secretary of Transportation would be required under the bill to review and provide a written response to any of the so-called “peer review” recommendations before the rules become effective.

At the same time, the bill decreases public transportation on technical safety standards committees (from 6 to 5) and increases industry representation (from 4 to 5), thereby assuring that the public representatives (some of whom are themselves consultants to the pipeline industry) will never be able to outvote the industry representatives.

Right now, the Technical Hazards Liquid Pipeline Safety Standards Committee and the Technical Pipeline Safety Standards Committee are already empowered to provide policy and advice to the Secretary of Transportation on proposed rules, which the Department is free to accept or reject in light of the biases that might surround such recommendations. Peer review panels—in contrast to policy advisory committees—are supposed to be objective scientific and technical watchdogs. Unfortunately, the peer review panels established under this bill are more likely to become industry lapdogs.

Under H.R. 1323, gas pipeline industry lobbyists, consultants and corporate insiders will be free to battle pipeline safety rules they don't like by misusing what is supposed to be a neutral and scientific peer review process to either generate pressure on the agency to drop a rule proposal or generate a basis for subsequent litigation challenging the rule. The net result will be that impor-

tant safety rules could end up being slowed down, weakened, or even blocked.

In this regard, I must note that the history of the DOT advisory panels is somewhat mixed when it comes to protecting public health and safety. For example, in 1988, the Department of Transportation proposed regulations to require operators to pipelines to have an anti-drug program for employees who perform certain sensitive safety-related functions, including drug testing prior to employment, after an accident, randomly, and upon probable cause. One of the technical advisory Committee that H.R. 1323 proposes to transform into an "peer review" panel voted 11-0 *not* to support the proposed rule—arguing that "the need for such a rule has not been demonstrated." The other technical advisory committee voted 9-4 that the proposed rule was "feasible" but recommended several weakened changes. Fortunately for the American public, DOT went ahead with the rule. The pipeline industry then tried unsuccessfully to sue the Department over the rules. If H.R. 1323 had been in effect, DOT might well have been prevented from adopting rules to protect the public from the risk that gas pipeline operators have an effective anti-drug program, including drug testing of employees who are in sensitive positions that could affect public safety.

I must also note that H.R. 1323 has even weaker conflict-of-interest provisions than the watered-down provisions of H.R. 1022, the House-passed Risk Assessment bill that was part of the GOP's so-called "Contract with America." Even this bill provided that "in the case of the regulatory decision affecting a *single entity* no peer reviewer representing such entity may be included on the panel" (emphasis added). H.R. 1323 doesn't even have this restriction.

During the Committee's markup, I offered an amendment—which was unfortunately rejected on a 19-23 party-line vote—which would have allowed the Secretary of Transportation discretion to exclude persons from serving as peer reviewers if they have a conflict-of-interest that could result in bias. Under any amendment, the Secretary could exclude members of the two advisory committees from serving as peer reviewers when they are associated with entities that may have a financial interest in the outcome, unless such interest is disclosed to the agency and the agency has determined that such interest will not reasonably be expected to create a bias in favor obtaining an outcome that is consistent with such interest. This would give DOT the ability they need to receive both full disclosure regarding any potential conflict-of-interest that could potentially lead a peer reviewer to have bias, and authority to exclude reviewers whose associations may give rise to such a conflict. Under my amendment, industry could still be represented on a peer review panel except in cases where there was a conflict-of-interest which could lead to a bias.

The opposition of the Republican Majority to this common sense provision was inexplicable, and raises serious concerns about whether the peer review process will operate effectively to assure that agency rules have a strong scientific or economic basis, or whether the process will merely be exploited by parties with an in-

terest in the outcome of agency rules to generate additional unnecessary and vexatious litigation challenging agency rulemakings.

EDWARD J. MARKEY.

