

HOUSE BILL REPORT

HB 1452

As Reported by House Committee On:

Agriculture & Ecology
Appropriations

Title: An act relating to funding hazardous liquid and gas pipeline safety.

Brief Description: Ensuring a sustainable, comprehensive pipeline safety program in the state.

Sponsors: Representatives Linville, G. Chandler, Ruderman, Cooper, Barlean, Ericksen, Quall, Marine, Conway, Rockefeller, Kenney, Pearson, Schual-Berke, Van Luven, Kagi, Keiser, Santos and Wood; by request of Utilities & Transportation Commission.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/8/01, 2/26/01 [DPS];

Appropriations: 3/6/01, 3/8/01 [DP2S(w/o sub AGECE)].

Brief Summary of Second Substitute Bill

- Establishes an annual pipeline safety fee payable by every gas company, interstate gas pipeline company, and hazardous liquid pipeline company subject to inspection and enforcement by the Washington Utilities and Transportation Commission (WUTC) and specifies minimum funding requirements for the WUTC when setting the fee.
- Requires the WUTC to establish by rule: (1) the methodology for setting fees; (2) procedures for fee refund petitions; and (3) separate maintenance of pipeline safety program fees from other fees collected.
- Requires the WUTC to report on specified elements of the pipeline safety program by November 15, 2002.
- Repeals provisions transferring powers, duties, and functions related to hazardous liquid pipeline safety from the WUTC to the Department of Ecology (DOE).

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Mielke, Republican Vice Chair; B. Chandler, Delvin, Dunshee, Grant, Hunt, Kirby, Quall, Roach, Schoesler and Sump.

Staff: Caroleen Dineen (786-7156).

Background:

The United States Department of Transportation (USDOT) has authority under federal law to regulate pipeline transportation of natural gas and hazardous liquids. The federal Office of Pipeline Safety (OPS) administers the federal pipeline safety program. Federal pipeline safety regulations address, among other issues, the design, construction, inspection, operation, and maintenance of pipeline facilities and the administration of the pipeline safety program.

The OPS may certify a state to assume the federal regulatory, inspection, and enforcement responsibilities for intrastate natural gas and hazardous liquid pipelines. The OPS also may enter into agreements with states not meeting the intrastate certification criteria to assume certain aspects of the federal intrastate pipeline safety program. According to information from the OPS, 47 states participate in the natural gas pipeline safety program, and 15 states participate in the intrastate hazardous liquid pipeline safety program. Washington participates in both intrastate programs.

The OPS also may authorize a state to act as its agent for inspection of interstate pipelines. However, the OPS retains enforcement authority in all states, including those with authorized agents. As of 1999, nine states had received authorization to act as interstate agents for natural gas pipelines, and four had received federal authority for hazardous liquid pipelines. Last year the WUTC received authorization to inspect interstate natural gas and hazardous liquid pipelines during construction, operation, and after incidents.

The OPS has authority to reimburse a state up to 50 percent of the actual costs of its pipeline safety program. According to the OPS, actual federal funding depends on both the state program's performance and the availability of appropriated funds.

The Washington State Pipeline Safety Act of 2000 required the WUTC to develop and implement a comprehensive hazardous liquid pipeline safety program consistent with federal law. In addition to other requirements, the 2000 legislation:

- Required the WUTC and the DOE to seek federal authority to act as federal agents to inspect and enforce federal law and to seek authority to adopt safety standards over interstate hazardous liquid pipelines;

- Required the WUTC to transfer all powers and duties related to hazardous liquid pipelines to the DOE if either the federal interstate pipeline preemption was lifted or the interstate pipeline authority was granted to the DOE;
- Allowed the WUTC to collect fees after obtaining authority to act as a federal agent;
- Created a new hazardous liquid pipeline safety account for use by the DOE in performing pipeline inspections; and
- Established the Citizens Committee on Pipeline Safety, a 13-member committee to advise state agencies and appropriate federal and local agencies on matters relating to hazardous liquid and natural gas pipeline safety, routing, construction, operation, and maintenance.

Summary of Substitute Bill:

An annual pipeline safety fee is established. The fee is payable by every gas company, interstate gas pipeline company, and hazardous liquid pipeline company subject to inspection and enforcement by the WUTC. The WUTC must collect the pipeline safety fee as part of the statutory fee paid by natural gas and hazardous liquid pipeline companies and allocate monies collected between the safety program and for other regulatory purposes. Any fee paid after the due date must include a late fee of 2 percent of the amount due, with delinquent fees accruing interest at the rate of 1 percent per month.

The WUTC is required to establish by rule the methodology for setting fees for various entities. The aggregate amount of fees must be sufficient to cover the administrative costs of the pipeline safety program, considering any federal funds received to offset these costs. At a minimum, the fees established must be sufficient to adequately fund: (1) pipeline inspection personnel; (2) timely review of pipeline safety and integrity plans; (3) timely development of spill response plans; (4) timely development of accurate maps of pipeline locations; (5) participation in federal pipeline safety efforts to the extent allowed by law; and (6) staffing of the Citizens Committee on Pipeline Safety (committee) at levels the committee deems necessary to provide oversight. The WUTC also must adopt rules to assure that the pipeline safety fees are maintained separately from other fees.

The WUTC must keep accurate records of the administration costs related to the natural gas pipeline safety program. The records must be open for public inspection. The WUTC's records and data are prima facie correct in any proceeding to challenge the reasonableness or correctness of any WUTC order fixing fees and distributing regulatory expenses.

An entity seeking to contest a fee must pay the fee and request a refund within six months of the due date. The refund is requested by filing a refund petition with the WUTC. The WUTC must adopt rules to establish procedures for refund decisions. The WUTC may delegate decisions on refund petitions to the secretary of the WUTC.

By November 15, 2002, the WUTC must submit a report to the appropriate legislative committees regarding staff utilization, inspection activity, fee methodology, and costs of the interstate pipeline safety program.

The committee is to serve as an advisory committee for the WUTC, and the WUTC is required to consult with and provide periodic reports to the committee on matters related to pipeline safety programs and activities, including development and regular review of funding elements. All members of the committee may participate fully in the committee's meetings, activities, and deliberations and must receive timely notice of and information related to committee business and decisions.

Provisions transferring powers, duties, and functions related to hazardous liquid pipeline safety from the WUTC to the DOE upon federal delegation of authority are repealed. Provisions specifying staffing of the committee by the DOE upon transfer of pipeline authority are eliminated. The hazardous liquid pipeline safety account is repealed.

Substitute Bill Compared to Original Bill:

The substitute adds provisions: (1) requiring the WUTC to report on the interstate pipeline safety program by November 15, 2002; (2) identifying minimum requirements for fee establishment to adequately fund specified elements of the pipeline safety program; (3) requiring the WUTC to allocate and separately maintain fees for pipeline safety from other fees collected from natural gas and hazardous liquid pipeline companies; and (4) specifying the role of the committee and the requirement for timely notices to all committee members. The substitute eliminates provisions requiring deposit of civil penalties for failure to notify the one-number locator service or for damaging underground facilities into the public service revolving fund. The substitute also eliminates the provision regarding DOE staffing of the committee upon transfer of pipeline authority to the DOE.

Appropriation: None.

Fiscal Note: Requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: A strong fee program is needed to implement the safety program the

citizens believe the Legislature passed last year. The program funded by this fee will be compliance-focused, and the WUTC will be able to do on-site audits and incident investigations. The WUTC has followed the direction of the 2000 legislation to staff the program at the level contemplated last year and has the full support of the federal OPS regarding the consistency of the program staffing plan with the delegated work plan. Comparisons of fees set by other states can be misleading.

This bill is not about the cost; rather, this bill is about the appropriate funding methodology. The program size seems fair, and the committee voted 9-0 in favor of it. Cities and citizens are very concerned about pipeline safety because of the unknown location of many lines and the proximity of lines to homes, schools, and urban areas. The federal OPS has not been able to provide the staff oversight needed to protect citizens from tragedies such as occurred in Bellingham. A damage prevention program is very important. The fee is a small price to pay for doing business safely.

(Concerns with original bill) The bill contains necessary clean up provisions from last year's legislation. The WUTC needs resources to fund the safety program, but the size of this program is inflated. Discrepancies exist between the federal OPS staffing guidelines and the staffing proposed by the WUTC. With regulated businesses, increased costs are passed onto ratepayers. The current funding proposals related to interstate and intrastate are inequitable. The Legislature should consider other states' programs as models and review the fee methods used in those states.

The committee approved this bill despite objections from the nonvoting members and sent a letter critical of the industry to the state's congressional delegation without distributing it to the nonvoting members. The bill should be amended to allow the nonvoting members of the committee to vote or to require distribution of all information to all members.

The sections dealing with deposit of penalties should be removed; these penalties should go into the general fund.

Testimony Against: None.

Testified: (Original bill -- pro) Representative Kelli Linville, prime sponsor; Carole Washburn, Washington Utilities and Transportation Commission; Joe Stohr, Department of Ecology; Richard Cole, city of Redmond; David Almond, city of Redmond; Holly Plackett, city of Redmond; Chuck Mosher, Citizens Committee on Pipeline Safety and Mayor of the city of Bellevue; Lee James, Citizens Committee on Pipeline Safety; Dan Claussen, Renton City Council; Dick Little, city of Bellingham; Richard Cooperwitz, citizen; Craig Ward, city of SeaTac; John Carpenter, city of Tumwater.

(Original bill -- did not indicate) David Delph, city of Bothell Fire & Emergency Management Services.

(Original bill -- concerns) Greg Hanon, Western States Petroleum Association; Dan Cummings, British Petroleum/Olympic Pipeline Company; Michael Transue, Utility Contractors Association; and Del Draper, Williams Pipeline Company.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Ecology. Signed by 27 members: Representatives Sehlin, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; Alexander, Benson, Boldt, Buck, Cody, Cox, Dunshee, Fromhold, Gombosky, Grant, Kagi, Keiser, Kenney, Kessler, Lambert, Linville, Pearson, Pflug, Ruderman, D. Schmidt, Schual-Berke, Talcott and Tokuda.

Minority Report: Without recommendation. Signed by 4 members: Representatives Lisk, Republican Vice Chair; Clements, Mastin and Mulliken.

Staff: Patricia Linehan (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Agriculture & Ecology:

Penalties for a person's failure to notify the one-number locator service that results in damage to either a natural gas or hazardous liquid pipeline are to be deposited into the general fund rather than into the hazardous liquid pipeline safety account. The second substitute bill also adds the following provisions: 1) Requiring the WUTC's fee methodology to provide for an equitable distribution of program costs among regulated entities; 2) Requiring the fee methodology to provide for a direct assignment of average inspection costs, considering specified factors, and to provide a uniform and equitable means for estimating and allocating costs for duties that are not directly assignable; 3) Requiring the WUTC to create an incentive program for allocating fees for pipeline safety in collaboration with the Citizens' Committee on Pipeline Safety; and 4) Specifying that increases in the aggregate amount of fees over the preceding fiscal year are subject to fiscal growth factor provisions.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2001.

Testimony For: The WUTC will establish a methodology, by rule, to pay for a pipeline safety program. Following last year's passage of pipeline safety legislation, funding of

\$800,000 was provided to the WUTC. The WUTC hired four engineers to complete the interstate pipeline inspections. As a part of the delegated agreement with the federal government, the WUTC received a mandatory work plan. This program at its current level.

It is inappropriate to look at mileage when considering a fee. Intrastate pipelines are two inches wide. The interstate pipelines are very large, have complex data systems and run at very high pressures, so the consequence of rupture is very different from intrastate pipelines. Interstate and intrastate programs will be charged fees that will pay for their individual program costs. The WUTC would be concerned with language in the bill that would put a cap on the fee structure.

(With concerns) Hazardous liquid operators are supportive of a strong pipeline safety program and are committed to funding a strong program, but the WUTC has not yet been able to justify many of the program elements and there are still many unanswered questions. Of the \$1.9 million dollar per year program costs, the WUTC assigns one half of the costs to interstate pipelines. Of 20,000 miles of pipeline in Washington, 12 percent, or 2,600 miles of pipeline, represents the interstate pipelines. According to the WUTC, the total number of average inspection days for interstate pipelines is 289 and the total number of average inspection days for the existing intrastate pipelines is 527 days, yet the WUTC proposes a 50/50 split of the program costs. Other states' programs that have federal delegation authority could be looked to as a guide for Washington's program.

The overall costs of the program at 1.8 million dollars seems excessive in comparison to what the program offers. There is a federal study that finds that a per-mile basis is the most equitable way to address the fee issue, rather than a volume or pressure basis. There continues to be a potential for the interstate entities to pay significantly more yet receive less attention and services from the WUTC than the intrastate entities.

Safety would be enhanced if the persons who install, alter, or repair the pipelines were certified. This legislation should include a study of the skills and training needed to run hazardous liquid and gas pipelines. There should be a representative from labor on the Citizens' Committee on Pipeline Safety.

Testimony Against: None.

Testified: (In support) Representative Linville, co-prime sponsor; and Carol Washburn, Washington Utilities and Transportation Commission.

(With concerns) Greg Hanon, Western States Petroleum Association; Dan Coyne, Williams Gas Pipeline; and Dan Sexton, Washington State Association of Plumbers, Pipefitters and Sprinklerfitters.