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SECOND SUBSTITUTE HOUSE BILL 2420

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State of Washington

56th Legislature

2000 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Linville, G. Chandler, Morris, Ericksen, Quall, Kastama, Santos, Grant, Stensen, Keiser, Poulsen, Wensman, Scott, Rockefeller, Reardon, Kenney, Cody, Lovick, Cooper, Koster, Haigh, McDonald, Van Luven, Lantz, Wood, Regala, Edmonds, Hurst, Dunshee, Constantine, Dickerson, Wolfe, Ogden, Ruderman and McIntire)

Read first time 02/08/2000. Referred to Committee on .

1 AN ACT Relating to oil and gas pipeline safety; amending RCW  
2 19.122.050 and 19.122.070; adding a new section to chapter 19.122 RCW;  
3 adding a new section to chapter 48.48 RCW; adding a new chapter to  
4 Title 70 RCW; creating new sections; repealing RCW 81.88.040;  
5 prescribing penalties; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The intent of this act is to protect the  
8 health and safety of the citizens of the state of Washington and the  
9 quality of the state's environment by developing and implementing  
10 environmental and public safety measures applicable to persons  
11 transporting hazardous liquids and gas by pipeline within the state of  
12 Washington. The legislature finds that public safety and the  
13 environment may best be protected by adopting standards that are equal  
14 to, or more stringent than, those adopted by the federal government.

15 (2) It is the further intent of this act to ensure that the state  
16 of Washington fully activate the authority it is currently provided  
17 under the federal pipeline safety act (49 U.S.C. Sec. 60101 et seq.) as  
18 it exists on the effective date of this act. In addition, it is the  
19 intent of this act to provide policy direction for the development of

1 state pipeline safety programs in the event of a delegation of  
2 authority to the state for inspection of interstate pipelines.

3 (3) It is also the intent of the legislature that the governor work  
4 with the state congressional delegation in seeking the following  
5 improvements to the federal pipeline safety act (49 U.S.C. Sec. 60101)  
6 when it is being reauthorized:

7 (a) The elimination of federal preemption; or

8 (b) Amendments that direct the federal office of pipeline safety to  
9 delegate authority to qualified states for:

10 (i) The regulation of interstate hazardous liquid and natural gas  
11 pipelines using standards equal to or more stringent than federal  
12 standards; and

13 (ii) The enforcement of state and federal requirements related to  
14 pipeline safety.

15 (4) In working with the state congressional delegation on  
16 reauthorization of the federal pipeline safety act, it is the intent of  
17 the legislature that the governor also seek the following:

18 (a) Requirements for rapid shutdown of ruptured pipelines;

19 (b) Periodic inspection and testing of pipelines; and

20 (c) Continuing education and certification of pipeline operators.

21 (5) In addition, it is the intent of the legislature that the  
22 governor work with the state congressional delegation in seeking higher  
23 levels of funding for state pipeline safety activities.

24 (6) While the legislature acknowledges that serious accidents have  
25 occurred for hazardous liquid, gas, and liquified natural gas pipelines  
26 in this nation and elsewhere, it recognizes that there are fundamental  
27 differences between hazardous liquid pipelines and natural gas  
28 pipelines and that a different system of safety regulations must be  
29 applied for each kind of pipeline.

30 NEW SECTION. **Sec. 2.** The definitions in this section apply  
31 throughout this chapter unless the context clearly requires otherwise.

32 (1) "Department" means the department of ecology.

33 (2) "Failsafe system" means a system or device that prevents a  
34 pipeline from exceeding its maximum operating pressure.

35 (3) "Gas" has the meaning given to it in 49 C.F.R. Part 192.

36 (4) "Hazardous liquid" means: (a) Petroleum, petroleum products,  
37 or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195  
38 in effect March 1, 1998; and (b) carbon dioxide. The department by

1 rule may incorporate by reference other substances designated as  
2 hazardous by the secretary of transportation under 49 U.S.C. Sec.  
3 60101(a)(4).

4 (5) "Incident" means any of the following events:

5 (a) An event that involves a release of gas from a pipeline or of  
6 liquified natural gas or gas from a liquified natural gas facility and:

7 (i) A death or personal injury requiring in-patient  
8 hospitalization; or

9 (ii) Estimated property damage, including the cost of gas lost to  
10 the operator or others, or both, of fifty thousand dollars or more;

11 (b) An event that results in an emergency shutdown of a liquified  
12 natural gas facility; or

13 (c) An event that is significant, in the judgment of the operator,  
14 even it did not meet the criteria in (a) or (b) of this subsection.

15 (6) "Local government" means a subdivision of the state or a city  
16 or town.

17 (7) "Person" means an individual, partnership, franchise holder,  
18 association, corporation, a state, a city, a county, or any subdivision  
19 or instrumentality of a state, and its employees, agents, or legal  
20 representatives.

21 (8) "Pipeline" or "pipeline system" means all parts of a pipeline  
22 facility through which hazardous liquid or carbon dioxide moves in  
23 transportation, including, but not limited to, line pipe, pumping  
24 units, fabricated assemblies associated with pumping units, metering  
25 and delivery stations and fabricated assemblies therein, breakout  
26 tanks, and excluding process pipelines and transfer pipelines as  
27 defined in chapter 173-180A WAC, as it exists on the effective date of  
28 this act.

29 (9) "Pipeline company" means a person or entity constructing,  
30 owning, or operating a pipeline for transporting hazardous liquid or  
31 gas.

32 (10) "Reportable release" means a spilling, leaking, pouring,  
33 emitting, discharging, or any other uncontrolled escape of a hazardous  
34 liquid in excess of one barrel, or forty-two gallons.

35 (11) "Safety management systems" means management systems that  
36 include coordinated interdisciplinary evaluations of the effect of  
37 significant changes to a pipeline system before such changes are  
38 implemented.

1        NEW SECTION.    **Sec. 3.** The hazardous liquid pipeline safety account  
2 is created in the custody of the state treasurer. All receipts from  
3 the federal office of pipeline safety and any other state or federal  
4 funds provided for hazardous liquid pipeline safety must be deposited  
5 in the account. Expenditures from the account may be used only for  
6 funding the pipeline safety program within the department of ecology.  
7 Only the director of the department or the director's designee may  
8 authorize expenditures from the account. The account is subject to the  
9 allotment procedures under chapter 43.88 RCW, but an appropriation is  
10 not required for expenditures.

11        NEW SECTION.    **Sec. 4.** (1) The department is responsible for the  
12 administration and enforcement of all laws related to hazardous liquid  
13 pipeline safety. To the extent not prohibited by federal law, the  
14 department shall develop and implement a comprehensive program of  
15 pipeline safety that applies equally to interstate and intrastate  
16 pipelines.

17        (2) By December 1, 2000, the department shall develop for the  
18 consideration of the legislature in the 2001 session a program that  
19 promotes the best achievable protection of public health and the  
20 environment. This program shall include the following elements:

21        (a) Requirements for pipeline companies to develop and implement  
22 structural integrity management plans;

23        (b) A schedule of inspection and testing within the pipeline  
24 distribution system of:

25        (i) All mechanical components;

26        (ii) All electronic components; and

27        (iii) The structural integrity of all pipelines as determined  
28 through either pressure testing, internal inspection tool surveys, or  
29 a combination of techniques;

30        (c) Failsafe systems;

31        (d) Safety management systems;

32        (e) Requirements related to the rapid location and isolation of all  
33 reportable releases from pipelines;

34        (f) Emergency response procedures and emergency response training;

35        (g) Requirements related to the training and certification of  
36 personnel who operate pipelines and pipeline systems;

37        (h) Measures aimed at the prevention of third-party excavation  
38 damage to pipelines through the establishment and required use of a

1 one-call system and through optional training requirements for  
2 municipal workers and construction workers.

3 (3) In providing this program to the legislature for review as  
4 provided in subsection (2) of this section, the department shall  
5 clearly identify whether federal authority for each program element  
6 exists or must be delegated. Upon review and approval by the  
7 legislature of the department's program in the 2001 session, the  
8 department shall implement the program elements for which it has  
9 authority.

10 (4) Prior to receiving delegation of authority from the federal  
11 office of pipeline safety, the department shall ensure that intrastate  
12 pipelines are not held to a higher standard than interstate pipelines.

13 (5) After the state has received delegation of inspection authority  
14 from the federal office of pipeline safety, the program elements in  
15 subsection (2) of this section shall be implemented through operations  
16 safety plans submitted by pipeline companies to the department for  
17 approval. The department shall approve such plans after they have been  
18 deemed fit for service. A plan shall be deemed fit for service when it  
19 results in pipelines that are designed, developed, constructed,  
20 operated, and periodically modified to provide the highest practicable  
21 level of public safety.

22 (6) The department shall serve as the single point of contact  
23 within the state for information related to hazardous liquid pipeline  
24 safety and shall provide technical assistance on hazardous liquid  
25 pipeline safety to local government authorities upon request.

26 (7) The department shall evaluate proposals developed by the  
27 federal office of pipeline safety and other agencies and organizations  
28 related to methods and technologies for testing the integrity of  
29 hazardous liquid pipeline structure, leak detection, and other elements  
30 of pipeline operation.

31 NEW SECTION. **Sec. 5.** (1) The department and the utilities and  
32 transportation commission shall jointly support the governor in seeking  
33 delegation of federal authority to inspect interstate pipelines and  
34 enforce state and federal pipeline safety requirements. The department  
35 and the utilities and transportation commission shall establish and  
36 submit to the United States secretary of transportation an inspection  
37 program that complies with requirements for delegated interstate agent  
38 inspection authority. To the extent that federal delegation of

1 interstate agent inspection authority permits, the inspection program  
2 for interstate pipelines, gas, and liquified natural gas facilities  
3 must be the same as the inspection program for intrastate pipelines and  
4 facilities. If the secretary of transportation delegates inspection  
5 authority to the state as provided in this subsection, the department  
6 and the utilities and transportation commission, at a minimum, shall do  
7 the following to carry out the delegated federal authority:

8 (a) Inspect hazardous liquid and gas pipelines and liquified  
9 natural gas facilities periodically as specified in the inspection  
10 program;

11 (b) Collect inspection fees;

12 (c) Order and oversee the testing of pipelines and liquified  
13 natural gas facilities as authorized by federal law and regulation; and

14 (d) File reports with the United States secretary of transportation  
15 as required to maintain the delegated inspection authority.

16 (2) In addition, the department and commission shall inspect, as  
17 necessary, any record, map, or written procedure required by federal  
18 law to be kept by a pipeline company concerning the reporting of  
19 reportable releases, and the design, construction, testing, or  
20 operation and maintenance of pipelines and liquid natural gas  
21 facilities.

22 NEW SECTION. **Sec. 6.** (1) All powers, duties, and functions of the  
23 utilities and transportation commission pertaining to hazardous liquid  
24 pipeline safety are transferred to the department of ecology.  
25 Responsibilities for the safety of gas pipelines and liquified natural  
26 gas facilities shall remain with the commission. Such powers, duties,  
27 and functions do not include rate setting as provided in chapters  
28 80.28, 80.24, and 81.24 RCW. All references to the commission or the  
29 utilities and transportation commission in the Revised Code of  
30 Washington shall be construed to mean the director or the department of  
31 ecology when referring to the functions transferred in this section.

32 (2)(a) All reports, documents, surveys, books, records, files,  
33 papers, or written material in the possession of the utilities and  
34 transportation commission pertaining to the powers, functions, and  
35 duties transferred shall be delivered to the custody of the department  
36 of ecology. All cabinets, furniture, office equipment, motor vehicles,  
37 and other tangible property employed by the utilities and  
38 transportation commission in carrying out the powers, functions, and

1 duties transferred shall be made available to the department of  
2 ecology. All funds, credits, or other assets held in connection with  
3 the powers, functions, and duties transferred shall be assigned to the  
4 department of ecology.

5 (b) Any appropriations made to the utilities and transportation  
6 commission for carrying out the powers, functions, and duties  
7 transferred shall, on the effective date of this section, be divided  
8 proportionally based on program responsibilities and shared with the  
9 department of ecology.

10 (c) Whenever any question arises as to the transfer of any  
11 personnel, funds, books, documents, records, papers, files, equipment,  
12 or other tangible property used or held in the exercise of the powers  
13 and the performance of the duties and functions transferred, the  
14 director of financial management shall make a determination as to the  
15 proper allocation and certify the same to the state agencies concerned.

16 (3) All employees of the utilities and transportation commission  
17 engaged in performing the powers, functions, and duties transferred are  
18 transferred to the jurisdiction of the department of ecology. All  
19 employees classified under chapter 41.06 RCW, the state civil service  
20 law, are assigned to the department of ecology to perform their usual  
21 duties upon the same terms as formerly, without any loss of rights,  
22 subject to any action that may be appropriate thereafter in accordance  
23 with the laws and rules governing state civil service.

24 (4) All rules and all pending business before the utilities and  
25 transportation commission pertaining to the powers, functions, and  
26 duties transferred shall be continued and acted upon by the department  
27 of ecology. All existing contracts and obligations shall remain in  
28 full force and shall be performed by the department of ecology.

29 (5) The transfer of the powers, duties, functions, and personnel of  
30 the utilities and transportation commission shall not affect the  
31 validity of any act performed before the effective date of this  
32 section.

33 (6) If apportionments of budgeted funds are required because of the  
34 transfers directed by this section, the director of financial  
35 management shall certify the apportionments to the agencies affected,  
36 the state auditor, and the state treasurer. Each of these shall make  
37 the appropriate transfer and adjustments in funds and appropriation  
38 accounts and equipment records in accordance with the certification.

1 (7) Nothing contained in this section may be construed to alter any  
2 existing collective bargaining unit or the provisions of any existing  
3 collective bargaining agreement until the agreement has expired or  
4 until the bargaining unit has been modified by action of the personnel  
5 board as provided by law.

6 NEW SECTION. **Sec. 7.** (1) A pipeline safety committee is  
7 established to advise the department and other appropriate federal,  
8 state, and local government agencies and officials on matters relating  
9 to hazardous liquid and gas pipeline safety, routing, construction,  
10 operation, and maintenance. The committee shall not exceed fifteen  
11 members. Members of the committee shall be appointed by the governor  
12 to staggered three-year terms and, at a minimum, shall consist of  
13 members of the general public, the utilities and transportation  
14 commission, the department of ecology, and representatives from each of  
15 the following: Interstate natural gas pipeline operators, natural gas  
16 local distribution companies, liquid fuel pipeline operators, and  
17 intrastate liquid fuel pipeline operations and representatives of local  
18 government, including elected officials. The committee shall review  
19 and comment on proposed rules and on the operation of the state  
20 pipeline safety program.

21 (2) Expenses for this group, as well as staff support provided by  
22 the department, shall be funded through a legislative appropriation to  
23 the department.

24 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.122 RCW  
25 to read as follows:

26 The utilities and transportation commission shall establish a  
27 single state-wide toll-free telephone number to be used for referring  
28 excavators to the appropriate one-call center. The utilities and  
29 transportation commission shall consult with the Washington utilities  
30 coordinating council to establish minimum standards and best management  
31 practices for one-call centers consistent with the recommendations of  
32 the governor's fuel accident prevention and response team issued in  
33 December 1999.

34 **Sec. 9.** RCW 19.122.050 and 1984 c 144 s 5 are each amended to read  
35 as follows:



1 (1) An excavator who, in the course of excavation, contacts or  
2 damages an underground facility shall immediately notify the utility  
3 owning or operating such facility and the one-number locator service.  
4 If the damage causes an emergency condition, the excavator causing the  
5 damage shall also immediately alert the appropriate local public safety  
6 agencies and take all appropriate steps to ensure the public safety.  
7 No damaged underground facility may be buried until it is repaired or  
8 relocated by the pipeline operator.

9 (2) Whenever excavation work occurs within five feet of a hazardous  
10 liquid or gas pipeline, the one-call system shall be notified by the  
11 excavator at least two working days prior to the start of excavation.

12 (3) The owner of the underground facilities damaged shall arrange  
13 for repairs or relocation as soon as is practical or may permit the  
14 excavator to do necessary repairs or relocation at a mutually  
15 acceptable price.

16 NEW SECTION. Sec. 10. A new section is added to chapter 48.48 RCW  
17 to read as follows:

18 (1) In consultation with the emergency management program within  
19 the state military department, the department of ecology, and local  
20 emergency services organizations, the chief of the Washington state  
21 patrol, through the director of fire protection or his or her  
22 authorized deputy, shall:

23 (a) Evaluate the preparedness of local first responders in meeting  
24 emergency management demands under subsection (2) of this section; and

25 (b) Conduct an assessment of the equipment and personnel needed by  
26 local first responders to meet emergency management demands related to  
27 pipelines.

28 (2) The chief of the Washington state patrol, through the director  
29 of fire protection or his or her deputy, shall develop curricula for  
30 training local first responders to deal with pipeline accidents. The  
31 curricula shall be developed in conjunction with pipeline companies and  
32 local first responders, and shall include a timetable and costs for  
33 providing training as defined in the curricula to all communities  
34 housing pipelines. Separate curricula shall be developed for hazardous  
35 liquid, liquified natural gas, and gas pipelines so that the  
36 differences between pipelines may be recognized and appropriate  
37 accident responses provided. The need for a training program for  
38 regional incident management teams shall also be evaluated.

1 (3) In consultation with other relevant agencies, the chief of the  
2 Washington state patrol, through the director of fire protection or his  
3 or her deputy, shall identify the need and means for achieving  
4 consistent application of the national interagency incident management  
5 system.

6 (4) For the purposes of this section, "local first responders"  
7 means police, fire, emergency medical staff, and volunteers.

8 NEW SECTION. **Sec. 11.** (1) After a pipeline company has been  
9 notified by an excavator pursuant to RCW 19.122.050 that excavation  
10 work will uncover any portion of the pipeline, the pipeline company  
11 shall ensure that the pipeline section in the vicinity of the  
12 excavation is examined for damage prior to being reburied.

13 (2) Immediately upon receiving information of third-party damage to  
14 a hazardous liquid pipeline, the company that owns or operates the  
15 pipeline shall terminate the flow of hazardous liquid in that pipeline  
16 until it has visually inspected the pipeline. After visual inspection,  
17 a pipeline company shall determine whether the pipeline section that  
18 has sustained third-party damage should be replaced or repaired, or  
19 whether it is safe to resume pipeline operation. A record of the  
20 company's inspection report and test results shall be provided to the  
21 department consistent with reporting requirements under 49 C.F.R. 195  
22 Subpart B.

23 (3) Pipeline companies shall immediately notify local first  
24 responders and the department of any reportable release from a  
25 pipeline.

26 NEW SECTION. **Sec. 12.** The department of labor and industries  
27 shall conduct an assessment of the current skills and training needs  
28 that qualify pipefitters and fuel gas installers to construct,  
29 assemble, maintain, or repair any hazardous liquid or gas pipeline  
30 within the state. The department shall report its findings to the  
31 legislature by October 1, 2000.

32 **Sec. 13.** RCW 19.122.070 and 1984 c 144 s 7 are each amended to  
33 read as follows:

34 (1) Any person who fails to notify the one-call system of  
35 excavation work that is planned to occur within the right-of-way of a

1 hazardous liquid pipeline is subject to a civil penalty of not more  
2 than ten thousand dollars for each violation.

3 (2) Any person who violates any provision of this chapter other  
4 than in subsection (1) of this section, and which violation results in  
5 damage to underground facilities, is subject to a civil penalty of not  
6 more than one thousand dollars for each violation. All penalties  
7 recovered in such actions shall be deposited in the general fund.

8 (~~(2)~~) (3) Any (~~excavator~~) person who willfully or maliciously  
9 damages a field-marked underground facility shall be liable for treble  
10 the costs incurred in repairing or relocating the facility.

11 (4) In those cases in which an excavator fails to notify known  
12 underground facility owners or the one-number locator service, any  
13 damage to the underground facility shall be deemed willful and  
14 malicious and shall be subject to treble damages for costs incurred in  
15 repairing or relocating the facility, in addition to penalties  
16 specified in subsection (1) of this section.

17 (~~(3)~~) (5) This chapter does not affect any civil remedies for  
18 personal injury or for property damage, including that to underground  
19 facilities, nor does this chapter create any new civil remedies for  
20 such damage.

21 NEW SECTION. Sec. 14. The department shall adopt rules: (1)  
22 Setting penalty amounts, but may not exceed the penalties specified in  
23 the federal pipeline safety laws, 49 U.S.C. Sec. 60101 et seq.; (2)  
24 establishing procedures for mitigating penalties assessed; and (3)  
25 incorporating by reference other substances designated as hazardous by  
26 the secretary of transportation under 49 U.S.C. Sec. 60101(a)(4).

27 NEW SECTION. Sec. 15. If any part of this act is found to be in  
28 conflict with federal requirements that are a prescribed condition to  
29 the allocation of federal funds to the state, the conflicting part of  
30 this act is inoperative solely to the extent of the conflict and with  
31 respect to the agencies directly affected, and this finding does not  
32 affect the operation of the remainder of this act in its application to  
33 the agencies concerned. Rules adopted under this act must meet federal  
34 requirements that are a necessary condition to the receipt of federal  
35 funds by the state.

1        NEW SECTION.    **Sec. 16.**    This act may be known and cited as the  
2 Washington state pipeline safety act.

3        NEW SECTION.    **Sec. 17.**    Sections 1 through 7, 11, and 14 through 16  
4 of this act constitute a new chapter in Title 70 RCW.

5        NEW SECTION.    **Sec. 18.**    RCW 81.88.040 (Intrastate pipeline safety  
6 standards--Definitions--Rules--Violations) and 1998 c 123 s 1 are each  
7 repealed.

8        NEW SECTION.    **Sec. 19.**    If specific funding for the purposes of  
9 this act, referencing this act by bill or chapter number, is not  
10 provided by June 30, 2000, in the omnibus appropriations act, this act  
11 is null and void.

12        NEW SECTION.    **Sec. 20.**    This act is necessary for the immediate  
13 preservation of the public peace, health, or safety, or support of the  
14 state government and its existing public institutions, and takes effect  
15 immediately.

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