



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 6, 2006

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510

Dear Mr. President:

There is transmitted herewith a proposed bill

“To provide for enhanced safety and environmental protection in pipeline transportation and to provide for enhanced reliability in the transportation of the Nation’s energy products by pipeline, and for other purposes.”

The Administration fully appreciates the important role of liquid and gas transmission pipelines—our Nation’s “Energy Highways”—even more so as a result of the impacts on our Nation’s pipeline system caused by last year’s tragic Gulf Coast storms. The Administration worked diligently with pipeline operators to avoid a disruption of fuel delivery to the Southeast and Mid-Atlantic regions. There were many lessons learned from these unfortunate events about the vulnerability of pipelines to natural and man-made disasters. These lessons are reflected in the drafting of this legislative proposal. This proposed bill focuses on safety and infrastructure reliability and is titled the “Pipeline Safety and Reliability Improvement Act of 2006.”

The proposed bill would provide for specific regulatory authority to assist with recovery of the pipeline infrastructure during natural or manmade disasters. Because the scope of pipeline operations ranges from large interstate operators to small municipalities across the country, the Department would like the ability to use emergency waivers when necessary to respond expeditiously to disasters and supply or capacity-constrained concerns.

The proposed bill would provide for minimal authority to assist pipeline operators in overcoming State and local-level impediments to constructing new pipelines. It would also allow for the permitting process for pipeline repairs to be further streamlined, based on identified best practices to provide for timely reviews by authorities who implement environmental and Endangered Species Act requirements, thus avoiding long-term capacity restrictions.

The proposed bill would address safety and environmental protection by preventing damage to underground pipelines caused by excavation work. It would provide for

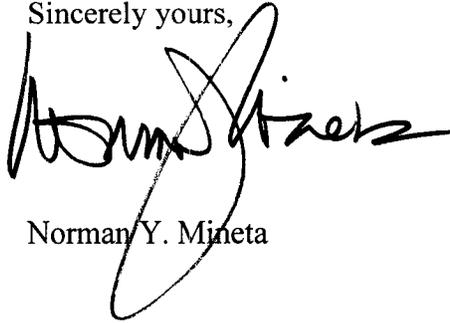
The Honorable Richard B. Cheney

incentives to States to develop more effective damage prevention programs. It would also provide to the Pipeline and Hazardous Materials Safety Administration and to the States authority to expand the use of civil enforcement authority against any excavator who violates "One-Call" laws.

Finally, the proposed bill would raise the cap on grants to State pipeline agencies over 6 years from 50 to 80 percent to offset the increasing cost of their delegated oversight duties. It is important to note that PHMSA sets the national regulatory standards for pipeline safety, and State agencies utilize these standards in inspections on the majority of pipeline infrastructure. The cost effective delivery of a national pipeline safety program would not be attainable without this important partnership with our State pipeline agencies.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed legislation to Congress and that its enactment would be in accord with the program of the President. An identical letter has been sent to the Speaker of the House.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Norman Y. Mineta", written over a large, stylized circular flourish.

Norman Y. Mineta

Enclosures (2)

Draft Bill

Section-By-Section Analysis



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 6, 2006

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

There is transmitted herewith a proposed bill

“To provide for enhanced safety and environmental protection in pipeline transportation and to provide for enhanced reliability in the transportation of the Nation’s energy products by pipeline, and for other purposes.”

The Administration fully appreciates the important role of liquid and gas transmission pipelines—our Nation’s “Energy Highways”—even more so as a result of the impacts on our Nation’s pipeline system caused by last year’s tragic Gulf Coast storms. The Administration worked diligently with pipeline operators to avoid a disruption of fuel delivery to the Southeast and Mid-Atlantic regions. There were many lessons learned from these unfortunate events about the vulnerability of pipelines to natural and man-made disasters. These lessons are reflected in the drafting of this legislative proposal. This proposed bill focuses on safety and infrastructure reliability and is titled the “Pipeline Safety and Reliability Improvement Act of 2006.”

The proposed bill would provide for specific regulatory authority to assist with recovery of the pipeline infrastructure during natural or manmade disasters. Because the scope of pipeline operations ranges from large interstate operators to small municipalities across the country, the Department would like the ability to use emergency waivers when necessary to respond expeditiously to disasters and supply or capacity-constrained concerns.

The proposed bill would provide for minimal authority to assist pipeline operators in overcoming State and local-level impediments to constructing new pipelines. It would also allow for the permitting process for pipeline repairs to be further streamlined, based on identified best practices to provide for timely reviews by authorities who implement environmental and Endangered Species Act requirements, thus avoiding long-term capacity restrictions.

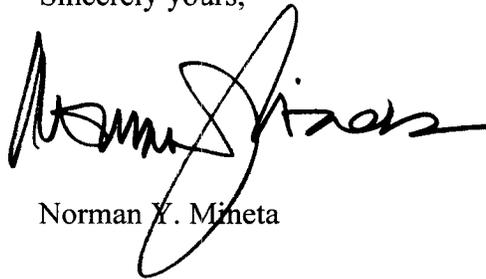
The proposed bill would address safety and environmental protection by preventing damage to underground pipelines caused by excavation work. It would provide for

incentives to States to develop more effective damage prevention programs. It would also provide to the Pipeline and Hazardous Materials Safety Administration and to the States authority to expand the use of civil enforcement authority against any excavator who violates "One-Call" laws.

Finally, the proposed bill would raise the cap on grants to State pipeline agencies over 6 years from 50 to 80 percent to offset the increasing cost of their delegated oversight duties. It is important to note that PHMSA sets the national regulatory standards for pipeline safety, and State agencies utilize these standards in inspections on the majority of pipeline infrastructure. The cost effective delivery of a national pipeline safety program would not be attainable without this important partnership with our State pipeline agencies.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed legislation to Congress and that its enactment would be in accord with the Program of the President. An identical letter has been sent to the President of the Senate.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Norman Y. Mineta". The signature is stylized with a large, sweeping loop at the end.

Norman Y. Mineta

Enclosures (2)

Draft Bill

Section-By-Section Analysis

PIPELINE SAFETY AND RELIABILITY IMPROVEMENT ACT OF 2006

DRAFT LEGISLATIVE LANGUAGE

A BILL

To provide for enhanced safety and environmental protection in pipeline transportation, to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE;

TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Pipeline Safety and Reliability Improvement Act of 2006”.

(b) **AMENDMENT OF TITLE 49, UNITED STATES CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a 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.

(c) **TABLE OF CONTENTS.**—

Sec. 1. Short title; amendment of title 49, United States Code; table of contents.

Sec. 2. Pipeline safety and damage prevention.

Sec. 3. Energy transportation infrastructure reliability.

Sec. 4. Authorization of appropriations.

SEC. 2. PIPELINE SAFETY AND DAMAGE PREVENTION.

(a) ONE CALL CIVIL ENFORCEMENT.—

(1) Section 60114 is amended by adding at the end a new subsection (d) to read as follows:

“(d) Enforcement.—Any person who engages in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area, who disregards location information or markings established by a pipeline facility operator, or who fails to take reasonable steps to ensure safe excavation to prevent damage to a pipeline, shall be subject to any action available under this chapter, including a civil action under section 60120, an administrative action under this chapter, including the assessment of civil penalties under section 60122, and, if appropriate, a criminal action under section 60123.”.

(2) Section 60122(a)(1) is amended by inserting “, (d),” between “section 60114(b)” and “or 60118(a) of this title” in the first sentence.

(b) STATE DAMAGE PREVENTION PROGRAMS.—

(1) Section 60105(b)(4) is amended to read as follows:

“(4) has committed to establishing a program designed to prevent damage by excavation, demolition, tunneling, or construction activity to the pipeline facilities to which the certification applies that subjects persons who violate the applicable requirements of that program to civil

penalties and other enforcement actions that are substantially the same as are provided under this chapter, and addresses the elements in section 60134(b);”.

(2) Chapter 601 is amended by adding at the end a new section 60134 to read as follows:

“§ 60134. State damage prevention programs

“(a) GENERAL.—In order to qualify for a grant under this section, each State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) having an annual certification in accordance with section 60105 or an agreement in accordance with section 60106 shall have an effective damage prevention program that meets the requirements of subsection (b).

“(b) DAMAGE PREVENTION PROGRAM ELEMENTS.—An effective damage prevention program includes the following elements:

“(1) participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate;

“(2) a process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program;

“(3) a process for reviewing the adequacy of a pipeline operator’s internal performance measures regarding persons performing locating services and quality assurance programs;

“(4) participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the

one-call center, the enforcing agency and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators;

“(5) a process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities;

“(6) a process for resolving disputes that defines the State authority’s role as a partner and facilitator to resolve issues;

“(7) enforcement of State damage-prevention laws and regulations for all aspects of the excavation process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority;

“(8) a process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs; and

“(9) a process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews.

“(c) GRANTS TO STATES.—(1) IN GENERAL.—The Secretary may make a grant of financial assistance to a State that qualifies under this section to assist in improving the overall quality and effectiveness of a damage prevention program of a State. In making grants under this section, the Secretary shall take into consideration the commitment of each State to ensuring the effectiveness of its damage prevention program, including legislative and regulatory actions taken by the State.

“(2) APPLICATION.—If a State authority files an application for a grant under this section not later than September 30 of a calendar year, the Secretary of Transportation shall review the State’s damage prevention program to determine its effectiveness. For programs determined to be effective, the Secretary may make a grant of financial assistance for the cost of the personnel, equipment, and activities the authority reasonably requires during the next calendar year to carry out an effective damage prevention enforcement program as defined in subsection (b) of this section. A grant made under this section is not subject to the section 60107(a) limitation on the maximum percentage of funds to be paid by the Secretary. A State authority filing an application under this subsection shall demonstrate that the governor (or chief executive) has designated it as the appropriate State authority to receive the grant funds. Funds provided under this section may not be used for lobbying or in direct support of litigation.

“(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, the following amounts are authorized to be appropriated to the Secretary:

“(1) \$1,500,000 for fiscal year 2008 to be derived from amounts appropriated to the Secretary under section 60125(c) of this title.

“(2) \$1,750,000 for fiscal year 2009 to be derived from amounts appropriated to the Secretary under section 60125(c) of this title.

“(3) \$2,000,000 for fiscal year 2010 to be derived from amounts appropriated to the Secretary under section 60125(c) of this title.

“Such funds shall remain available until expended.”.

(3) In the table of sections of chapter 601, the following item is added at the end:

“60134. State damage prevention programs.”.

(c) STATE PIPELINE SAFETY GRANTS.—Section 60107(a) is amended by striking “not more than 50 percent” and inserting in its place “not more than 80 percent”.

(d) DAMAGE PREVENTION TECHNOLOGY DEVELOPMENT.—Section 60114 (as amended by this section) is further amended by adding at the end a new subsection (e) to read as follows:

“(e) TECHNOLOGY DEVELOPMENT GRANTS.—To the extent and in the amount provided in advance in appropriations acts, the Secretary may make grants to any organization or entity (not including for-profit entities) for the development of technologies that will facilitate the prevention of pipeline damage caused by excavation activities, with emphasis on wireless and global positioning technologies having potential for use in connection with notification systems and underground facility locating and marking services. If a grant is made pursuant to this subsection, the Secretary shall establish and follow appropriate procedures for awarding grants under this subsection and shall ensure that any funds granted are properly used. Funds provided under this subsection may not be used for lobbying or in direct support of litigation. The Secretary may also support such technology development through cooperative agreements with trade associations, academic institutions, and other qualified organizations.”.

(e) SAFETY ORDERS.—Section 60117(l) is amended to read as follows:

“(l) SAFETY ORDERS.—(1) IN GENERAL.—After notice and opportunity for a hearing, if the Secretary determines that a pipeline facility has any condition that could affect public safety, property, or the environment, the Secretary may order the operator of the facility to take necessary corrective action, including but not limited to physical inspection, testing, repair, replacement, or other appropriate action to remedy that condition.

“(2) CONSIDERATIONS.—In making a determination under paragraph (1) of this section, the Secretary shall, if relevant, consider—

“(A) the considerations specified in section 60112(b);

“(B) the likelihood that the condition will impair the serviceability of a pipeline;

“(C) the likelihood that the condition will progress over time;

“(D) the likelihood that the condition is present or could develop on other areas of the pipeline; and

“(E) other factors the Secretary considers appropriate.”.

(f) GAS PIPELINE INTEGRITY REASSESSMENT.—Section 60109(c)(3)(B) is amended to read as follows:

“(B) Subject to paragraph (5), periodic reassessment of the facility at a minimum of once every 7 years, using methods described in subparagraph (A), until the Secretary issues regulations basing the reassessment intervals on technical data, risk factors, and engineering analyses.”.

(g) INTEGRITY PROGRAM ENFORCEMENT. —Section 60109(c)(9)(A)(iii) is amended to read as follows:

“(iii) INADEQUATE PROGRAMS.—If the Secretary determines that a risk analysis or integrity management program does not comply with the requirements of this subsection or regulations issued as described in paragraph (2), has not been adequately implemented, or is inadequate for the safe operation of a pipeline facility, the Secretary may conduct proceedings under sections 60108(a), 60112, 60118(a) and (b), 60120, 60122, or any other section of this chapter, to enforce the requirements.”.

(h) LIMITATION ON INFLATIONARY ADJUSTMENTS.—Section 60122(a) is amended by adding a new paragraph (4) to read as follows:

“(4) The maximum civil penalty amounts available under this section are excepted from the inflation adjustment requirements of section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.”.

(i) DIRECT SALES LINES.—Subsection 60101(a) is amended—

(1) in paragraph (6):

(A) by striking “-- (A) means a gas pipeline” and inserting “means a gas pipeline”

(B) by striking subparagraph (B);

(C) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively;

and

(D) by striking “(15 U.S.C. 717 et seq.); but” at the end of new subparagraph (A) and inserting in its place “(15 U.S.C. 717 et seq.)”.

(2) in paragraph (9):

(A) by striking “means-- (A) a gas pipeline facility” and inserting in its place “means a gas pipeline facility”;

(B) by striking subparagraph (B); and

(C) by striking “(15 U.S.C. 717 et seq.); and” at the end of paragraph (9) and inserting in its place “(15 U.S.C. 717 et seq.)”.

SEC. 3. ENERGY TRANSPORTATION INFRASTRUCTURE RELIABILITY.

(a) PERMIT STREAMLINING.—

(1) CONSTRUCTION AND EXPANSION OF HAZARDOUS LIQUID PIPELINES.—

(A) Section 60133(e) is amended to read as follows:

“(e) OMBUDSMAN.—The Secretary shall designate an ombudsman to assist resolving disagreements between Federal, State, and local agencies and pipeline operators arising during agency review of pipeline repairs and hazardous liquid pipeline construction projects in order to expedite pipeline projects, consistent with protection of human health, public safety, and the environment.”.

(B) Section 60133(f) is amended by revising the first sentence to read as follows:

“The Secretary shall encourage States and local governments to consolidate their respective permitting processes for pipeline repair and hazardous liquid pipeline construction projects subject to any time periods for repairs specified by rule by the Secretary.”

(C) Section 60133 is further amended by adding at the end a new subsection (g) to read as follows:

“(g) CONSTRUCTION AND EXPANSION OF PIPELINES.—Upon request by any person proposing to construct or expand a hazardous liquid pipeline, the Secretary may coordinate the environmental reviews and permitting processes of the agencies having responsibility for issuing permits or otherwise authorizing pipeline construction projects if the Secretary determines that coordinating the permitting processes to expedite the completion of the project would be in the national interest.”.

(2) PIPELINE REPAIRS.—Section 60133 (as amended by this subsection) is further amended by adding at the end a new subsection (h) to read as follows:

“(h) PRESUMPTIVE EXCLUSIONS.—

“(1) NEPA REVIEW.—With respect to any of the activities described in paragraph (3) of this subsection, including activities on non-Federal land, if the Federal agency having responsibility for conducting environmental reviews under the National Environmental Policy Act (NEPA) determines that:

“(A) the proposed activity is substantially similar to a pipeline repair activity for which the Interagency Committee has developed or adopted best practices under paragraph (a)(3) of this section for determining and reducing or eliminating the potential for significant impacts to the human environment under NEPA;

“(B) the proposed repair activity is consistent with these best practices; and

“(C) in the absence of extraordinary circumstances, the proposed repair activity is not likely to individually or cumulatively result in significant impacts on the human environment,

“then a Federal agency having responsibility for conducting environmental reviews under NEPA or coordinating the permitting process may, in consultation with the Council on Environmental Quality, adopt categorical exclusions for those repair activities, and actions by those agencies regarding pipeline repair permits shall be subject to a rebuttable presumption that the use of a categorical exclusion will apply.

“(2) ESA REVIEW.—With respect to any of the activities described in paragraph (3) of this subsection, including activities on non-Federal land, if the Secretary of Interior or the Secretary of Commerce:

“(A) determines that a proposed activity is substantially similar to a pipeline repair activity for which the Interagency Committee has developed or adopted best practices

under paragraph (a)(3) of this section for determining and reducing or eliminating impacts to listed species under the Endangered Species Act (ESA);

“(B) concludes that if these best practices are followed, the repair activity is not likely to jeopardize the continued existence of any listed species or adversely modify the habitat of such species; and

“(C) concludes that the repair activity would not conflict with any existing biological opinion or any agreement made under the ESA relating to the geographic area where the proposed pipeline repair will occur,

“then action by the Secretary of the Interior or the Secretary of Commerce regarding pipeline repair permits shall be subject to a rebuttable presumption that the ESA’s biological assessment and consultation requirements have been satisfied.

“(3) ACTIVITIES DESCRIBED.—The activities referred to in paragraphs (1) and (2) are the following:

“(A) Site repairs required to ensure the integrity of an existing pipeline facility performed entirely within an existing right-of-way corridor that do not change the physical character of the facility and where the facility was constructed in accordance with the environmental reviews and authorizations, if any, required by Federal law.

“(B) Functional replacement of pipeline equipment performed entirely within an existing right-of-way corridor that does not change the physical character of the facility and where the facility was constructed in accordance with the environmental reviews and authorizations, if any, required by Federal law.”.

(b) INTERNATIONAL ACTIVITIES.—Section 60117 (as amended by section 2 of this Act) is further amended by adding at the end a new subsection (m) to read as follows:

“(m) INTERNATIONAL UNIFORMITY OF STANDARDS AND REQUIREMENTS.—

“(1) PARTICIPATION IN INTERNATIONAL FORUMS.—Subject to guidance and direction from the Secretary of State, the Secretary of Transportation may participate in international forums that establish or recommend mandatory standards and requirements for transporting gas and hazardous liquids by pipeline in international commerce.

“(2) CONSULTATION.—The Secretary may consult with interested authorities to ensure that, to the extent practicable, regulations the Secretary prescribes under this chapter are consistent with standards and requirements related to transporting gas and hazardous liquids by pipeline that international authorities adopt.

“(3) DIFFERENCES IN INTERNATIONAL STANDARDS AND REQUIREMENTS.—If the Secretary prescribes a standard or requirement concerning international transportation by pipeline, nothing in this section requires that such standard be identical to a standard or requirement adopted by an international authority.

“(4) INFORMATION EXCHANGE AND TECHNICAL ASSISTANCE.—Subject to guidance and direction of the Secretary of State, the Secretary of Transportation may engage in activities to support international efforts to share information about the risks to the public and the environment from pipelines and means of protecting against those risks. The Secretary may provide technical assistance to domestic and appropriate international organizations to facilitate efforts to reduce or eliminate inconsistent requirements that inhibit the safety and efficiency of pipeline transportation in or affecting interstate or foreign commerce.”.

(c) EMERGENCY PREPAREDNESS.—

(1) EMERGENCY WAIVERS.—Section 60118(c) is amended to read as follows:

“(c) WAIVERS BY SECRETARY.—

“(1) NON-EMERGENCY WAIVERS.—On application of a person owning or operating a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate, if the waiver is not inconsistent with pipeline safety. The Secretary shall state in the order the reasons for granting a waiver under this paragraph. The Secretary may act on a non-emergency waiver only after notice and an opportunity for a hearing.

“(2) EMERGENCY WAIVERS.—The Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate without prior notice and comment if the Secretary determines that the waiver is necessary to address an actual or impending emergency involving pipeline transportation, including but not limited to emergencies caused by natural or man-made disasters. The Secretary shall state in the order the reasons for granting a waiver under this paragraph.”.

(2) RESTORATION OF OPERATIONS.—Section 60301(d) is amended—

(A) in paragraph (1)(B), by striking “and”;

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) a new paragraph (2) to read as follows:

“(2) may be used for activities involving the restoration of energy pipelines that have been or are anticipated to become disrupted by man-made or natural disaster, including aid to other Federal agencies; and”.

(d) PETROLEUM TRANSPORTATION CAPACITY STUDY.—(1) Chapter 601 (as amended by this Act) is further amended by adding at the end a new section 60135 to read as follows:

“§ 60135. Petroleum product transportation capacity study

“(a) IN GENERAL.—The Secretary of Transportation may conduct analyses of the domestic transport of petroleum products by pipeline. Such analyses should identify areas of the United States where shortages of pipeline capacity and reliability concerns exist, where such shortages have or are anticipated to contribute to significant increases in the price of petroleum products, or where unplanned loss of individual pipelines may cause shortages of petroleum products or price disruptions. For the purpose of this section, petroleum product means oil of any kind or in any form, gasoline, diesel fuel, aviation fuel, fuel oil, kerosene, any product obtained from refining or processing of crude oil, liquefied petroleum gases, natural gas liquids, petrochemical feedstocks, condensate, waste or refuse mixtures containing any of the above, and any other liquid hydrocarbon compounds.

“(b) CONSULTATION.—In preparing any such analyses, the Secretary may consult with other government agencies and public- and private-sector experts in pipeline and other forms of petroleum product transportation, energy consumption, capacity, population and economic development.

“(c) DATA COLLECTION.—

“(1) The Secretary may collect information relevant to the study from the Department of Energy’s Energy Information Administration and may enter into an interagency agreement for this purpose.

“(2) In the absence of sufficient information collection by the Energy Information Administration, the Secretary may collect information relevant to the study in any other manner.”.

(2) In the table of sections of chapter 601, the following item is added at the end:

“60135. Petroleum product transportation capacity study.”.

(e) COST REIMBURSEMENTS. —Section 60117 (as amended by sections 2 and 3(b) of this Act) is further amended by adding at the end a new subsection (n) to read as follows:

“(n) COST RECOVERY FOR DESIGN REVIEWS.—If the Secretary conducts facility design safety reviews, consulting, or field work in connection with a proposal to construct, expand, or operate a pipeline system or liquefied natural gas pipeline facility, the Secretary may require the person requesting such reviews or consulting to pay the associated costs incurred by the Secretary, such funds to be deposited into the pipeline safety fund. Funds deposited pursuant to this section are authorized to be appropriated for the purposes set forth in section 60301(d). The Secretary may assess such costs in any reasonable manner.”.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) Section 60125(a) is amended to read as follows:

“(a) GAS AND HAZARDOUS LIQUID.—To carry out this chapter (except for section 60107) related to gas and hazardous liquid, the following amounts are authorized to be appropriated to the Department of Transportation, from fees collected under section 60301 in each respective year, and from the Oil Spill Liability Trust Fund as specified below:

“(1) for fiscal year 2007, \$55,497,000, of which \$39,872,000 is from fees and \$15,625,000 is from the Fund;

“(2) for fiscal year 2008, \$57,997,000, of which \$42,651,000 is from fees and \$15,346,000 is from the Fund;

“(3) for fiscal year 2009, \$60,482,000, of which \$44,839,000 is from fees and \$16,003,000 is from the Fund;

“(4) for fiscal year 2010, \$62,375,000, of which \$46,444,000 is from fees and \$15,931,000 is from the Fund.”.

(b) Section 60125(b)(1) concerning State Grants is amended to read as follows:

“(1) To carry out section 60107 of this chapter, the following amounts are authorized to be appropriated to the Department of Transportation, from fees collected under section 60301 in each respective year, and from the Oil Spill Liability Trust Fund as specified below:

“(A) for fiscal year 2007, \$20,238,000, of which \$17,053,000 is from fees and \$3,185,000 is from the Fund.

“(B) for fiscal year 2008, \$23,221,000, of which \$19,567,000 is from fees and \$3,654,000 is from the Fund. Of the amount appropriated to carry out section 60107 of this title, \$1,500,000 shall be available for fiscal year 2008 for the Grants to States authorized in section 60134.

“(C) for fiscal year 2009, \$24,513,000, of which \$20,656,000 is from fees and \$3,857,000 is from the Fund. Of the amount appropriated to carry out section 60107 of this title, \$1,750,000 shall be available for fiscal year 2009 for the Grants to States authorized in section 60134.

“(D) for fiscal year 2010, \$25,855,000, of which \$21,786,000 is from fees and \$4,069,000 is from the Fund. Of the amount appropriated to carry out section 60107 of this

title, \$2,000,000 shall be available for fiscal year 2010 for the Grants to States authorized in section 60134.”.

(c) Section 60125(c) is hereby repealed.

(d) Sections 60125(d) and (e) are redesignated as sections 60125(c) and (d) respectively.

(e) Section 60125(c)(2), as redesignated by subsection (d) of this section, is amended by striking “2003 through 2006” and inserting “2007 through 2010”.

(f) Section 6107 is amended:

(1) In subsection (a), by striking “fiscal years 2003 through 2006” and inserting “fiscal years 2007 through 2010”.

(2) In subsection (b), by striking “for fiscal years 2003 through 2006” and inserting “for fiscal years 2007 through 2010”.

(g) Section 5128 is amended as follows:

(1) in subsection (a)—

(A) by adding a new paragraph (5) to read as follows: “(5) For fiscal year 2009, such sums as may be necessary.”; and

(B) by adding a new paragraph (6) to read as follows: “(6) For fiscal year 2010, such sums as may be necessary.”.

(2) in subsection (b) by striking “through 2008” in the introductory language and inserting “through 2010”; and

(3) in subsection (c) by striking “through 2008” and inserting “through 2010”.

PIPELINE SAFETY AND RELIABILITY IMPROVEMENT ACT OF 2006

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE; TABLE OF CONTENTS. This section provides that the bill may be cited as the “Pipeline Safety and Reliability Improvement Act of 2006,” references Title 49, United States Code, and provides a table of contents.

SEC. 2. PIPELINE SAFETY AND DAMAGE PREVENTION.

SUBSECTION 2(A). ONE CALL CIVIL ENFORCEMENT.

Subsection 2(a) explicitly authorizes the Pipeline and Hazardous Materials Safety Administration (PHMSA) to conduct civil and administrative enforcement proceedings against any person who engages in excavation activities without using an available one-call notification system in addition to the explicit criminal enforcement authority provided pursuant to 49 U.S.C. § 60123. The intention is to ensure proactive compliance with using one-call rather than post-incident enforcement, particularly compliance by commercial excavators who should be well aware of their obligations.

SUBSECTION 2(B). STATE DAMAGE PREVENTION PROGRAMS.

Subsection 2(b) establishes a grant program to incentivize States with annual certifications or interstate agent agreements to have an effective damage prevention program, and authorizes an appropriation for PHMSA to make grants to the appropriate State agency (designated by the governor) for carrying out State damage prevention programs if the programs meet certain minimum standards for effectiveness. Currently, State damage prevention programs tend to vary widely from State to State. Outside force damage is a leading cause of release incidents. Damage-related releases from local distribution systems may involve less volume released but can be in closer proximity to populated areas. The proposed amount of the grant program is \$1,500,000 for fiscal year 2008, \$1,750,000 for fiscal year 2009, and \$2,000,000 for fiscal year 2010.

SUBSECTION 2(C). STATE PIPELINE SAFETY GRANTS.

Subsection 2(c) modifies PHMSA’s cap on matching funds for State pipeline safety programs from “not more than 50 percent” of the cost of personnel, equipment, and activities involved in the State’s pipeline safety program, to “not more than 80 percent” of the costs. PHMSA would implement the increase on an incremental basis of 5 percent per year over a six year period starting in fiscal year 2008. The majority of new pipeline mileage is associated with local distribution systems regulated by State authorities, and recent mandates have increasingly been applied to intrastate lines. Therefore, the burdens on our State partners have increased

substantially. This has led to concerns that unless the cap on Federal matching funds is increased, some States may consider withdrawing from the pipeline safety program.

SUBSECTION 2(D). DAMAGE PREVENTION TECHNOLOGY DEVELOPMENT.

Subsection 2(d) authorizes an appropriation for PHMSA to make grants to stimulate advances in technologies that facilitate the prevention of pipeline damage caused by excavation activities. Outside force damage is a leading cause of release incidents. Federal incentives are needed to accelerate the development of wireless and global positioning technologies having potential for use in connection with notification systems and underground facility locating services.

SUBSECTION 2(E). SAFETY ORDERS.

Subsection 2(e) provides standards, criteria, and requisite process for PHMSA's use of "safety orders" to address potentially unsafe conditions that do not rise to the level of a "hazardous condition" or constitute a violation of safety regulations. Currently, the utility of the existing safety order provision at 49 U.S.C. § 60117(l) is limited by its failure to provide objective standards for determining when the agency should issue a safety order (i.e., when a potentially unsafe condition that could affect public safety, property, or the environment is present). In addition, the current provision fails to ensure a notice and hearing process. The amendment to the safety order provision, as made by Subsection 2(e), will provide PHMSA with a proactive enforcement tool to require operators to address pipeline conditions before they result in a hazardous incident and fuel supply is disrupted.

SUBSECTION 2(F). GAS PIPELINE INTEGRITY REASSESSMENT.

Subsection 2(f) modifies the current provision at 49 U.S.C. § 60109(c)(3)(B) on gas Integrity Management Program (IMP) reassessment interval to eliminate the fixed maximum interval and permit the establishment of reassessment intervals on the basis of technical data and risk factors. Currently, the statute requires reassessment for gas pipelines at intervals of no more than 7 years. The IMP concept, however, is based on assessing the risks associated with individual pipelines and providing pipeline operators with the flexibility to direct compliance resources to pipelines where the risks are greatest. For example, certain high risk pipelines may require reassessment at intervals shorter than 7 years to ensure public safety, while longer intervals may be appropriate for lower risk pipelines if justified by the technical data and engineering analysis. This subsection eliminates the fixed maximum interval once PHMSA issues regulations providing pipeline operators with the flexibility to establish intervals based on technical data and risk factors of their particular system.

SUBSECTION 2(G). INTEGRITY PROGRAM ENFORCEMENT.

Subsection 2(g) modifies the existing Integrity Management Program (IMP) plans and procedures enforcement provision at 49 U.S.C. § 60109(c)(9)(A)(iii) to clarify that PHMSA may take any appropriate enforcement action under Chapter 601 of Title 49, U.S. Code, when it determines that an operator's IMP plan is inadequate, including compliance orders and assessment of civil penalties. Making this technical clarification will ensure that the current

provision is not misinterpreted to limit enforcement to Notices of Amendment when PHMSA finds an operator's IMP procedures to be out of compliance with applicable requirements.

SUBSECTION 2(H). LIMITATION ON INFLATIONARY ADJUSTMENTS.

Subsection 2(h) exempts the maximum administrative civil penalty amounts for pipeline safety violations from the mandatory inflationary adjustments required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Under 49 U.S.C. § 60122, the maximum administrative civil penalty amounts for pipeline safety violations are \$100,000 per violation per day of violation, with a maximum of \$1,000,000 for a related series of violations. Administrative penalties for violations of the pipeline safety regulations vary and are assessed on a case-by-case basis, as opposed to being set by a predetermined schedule of penalty amounts, but penalties have typically not been assessed at the maximum. Therefore, the burden of making periodic minor inflationary adjustments to the maximum amounts does not have a corresponding benefit.

SUBSECTION 2(I). DIRECT SALES LATERALS.

Subsection 2(i) modifies the definitions of "interstate gas pipeline facility" and "intrastate gas pipeline facility" such that direct sales laterals are no longer excluded from the Federal pipeline safety requirements. A direct sales lateral is typically a small-diameter pipeline that connects a large-diameter interstate trunk-line to a single, large, end-use customer, such as a power plant or factory. For mainly historical reasons, the definition of interstate gas pipeline facility did not include direct sales laterals and their safety regulation has generally been handled by the States. Industry changes over the last 30 years, however, have rendered this historical distinction largely obsolete. For example, many direct sales laterals are now owned, operated, or maintained by the same entity that owns the interstate trunk-lines they connect to. Also, for the purpose of economic regulation, the Federal Energy Regulatory Commission no longer makes a distinction between direct sales laterals and interstate pipelines.

Direct sales laterals are high-pressure lines that are functionally similar to interstate trunk-lines, transport gas in interstate commerce, and have similar maintenance requirements. Moreover, an interstate pipeline operator with direct sales laterals in multiple States may be subject to inconsistent regulation across the States. For example, interstate natural gas pipelines are now subject to PHMSA's comprehensive Gas Integrity Management Program, Operator Qualification Program, and Public Education and Awareness Program. Given the comprehensive Federal safety program, subjecting small segments of the interstate pipeline system to differing and potentially inconsistent regulation at the State level creates unnecessary inefficiencies. Accordingly, this subsection modifies the relevant definitions in order to ensure that the entire interstate pipeline system, including direct sales laterals, are subject to consistent safety and maintenance requirements. Finally, placing direct sales laterals under Federal safety regulations would permit the States to focus their resources on local gas distribution pipeline safety, which is the fastest expanding category of pipeline mileage in most States.

SEC. 3. ENERGY TRANSPORTATION INFRASTRUCTURE RELIABILITY.

SUBSECTION 3(A). PERMIT STREAMLINING.

Paragraph 3(a)(1) “Construction and Expansion of Hazardous Liquid Pipelines” provides limited authorization for PHMSA to coordinate and assist with expediting the environmental and other authorizations required for constructing new hazardous liquid pipelines, consistent with applicable statutory and regulatory requirements, if requested by a person proposing such project. This paragraph allows PHMSA, if requested, to coordinate and assist with expediting the processes of the agencies whose authorizations are necessary for construction of new hazardous liquid pipelines, consistent with applicable statutory and regulatory requirements, to help ensure that operators are able to obtain in a timely manner all of the necessary permits and authorizations for constructing new hazardous liquid pipelines.

PHMSA’s role in coordinating the activities of the permitting agencies would include utilizing its existing databases of information along pipeline routes including environmentally sensitive areas, drinking water intakes, and populated areas, the National Pipeline Mapping System, and the best management practices developed under section 60133 together in a web-based application that provides project applicants with comprehensive guidance to help ensure that the relevant permitting agencies in the geographic area of responsibility are involved early and permit applications can be filed and processed in parallel rather than in series. PHMSA would also use its good offices as an ombudsman to assist the permitting agencies with any conflicts that arise among them. It is the Federal permitting agencies that need to avail themselves of BMPs/CATEXs. PHMSA does not itself issue any pipeline repair permits.

Paragraph 3(a)(2) “Pipeline Repairs” defines criteria for pipeline repairs conducted within an existing right-of-way, which will not result in any change in the environmental status quo, to be presumptively: (1) subject to a categorical exclusion under the National Environmental Policy Act, and (2) receive programmatic review under Endangered Species Act (ESA), on the condition that such repairs will be conducted in accordance with the pipeline repair best practices developed by the Interagency Committee under 49 U.S.C. § 60133 and do not conflict with any biological opinions or agreements under the ESA. This paragraph helps streamline the NEPA and ESA review processes to ensure operators are able to obtain the necessary permits and authorizations to do the repair(s) within the specified time frame consistent with the Integrity Management Program (IMP) statutes and regulations that require operators to conduct certain safety-related pipeline repairs within prescribed time limits.

SUBSECTION 3(B). INTERNATIONAL ACTIVITIES.

Subsection 3(b) authorizes PHMSA to engage in activities in support of efforts to harmonize national and international safety standards to facilitate the construction and safe operation of international and cross-border pipeline facilities. Currently, operators of cross-border pipeline facilities may face different standards on each side of the border. This subsection allows PHMSA to participate in international standard setting bodies and engage in activities to remove impediments to cross-border operations, such as harmonizing conflicting training and work-force qualification requirements.

SUBSECTION 3(c). EMERGENCY PREPAREDNESS.

Paragraph 3(c)(1) “Emergency Waivers” authorizes PHMSA to issue an emergency waiver of a pipeline safety regulation if necessary. Currently, PHMSA may waive compliance with any part of an applicable safety standard, but only after public notice and opportunity for a hearing. Authority to issue emergency waivers enables expeditious response to natural disasters. PHMSA would still be required to State the reasons for granting the waiver.

Paragraph 3(c)(2) “Restoration of Operations” specifically authorizes PHMSA to use pipeline safety user fees for activities involving the restoration of energy pipelines that have been or are anticipated to become disrupted by man-made or natural disaster. As demonstrated by Hurricane Katrina, PHMSA’s institutional capacity and detailed knowledge of pipeline operations are essential to achieving rapid restoration of operations to maintain critical energy supplies after a disaster or other emergency supply interruption. This paragraph will ensure that the current authority to use user fees is broad enough to include expenditures involved in restorations of operations along with expenditures directly related to pipeline safety.

SUBSECTION 3(D). PETROLEUM TRANSPORTATION CAPACITY STUDY.

Subsection 3(d) authorizes PHMSA to perform a study, in conjunction with the Department of Energy, to identify liquid pipeline transportation capacity restrictions affecting energy supplies. Increased demand, aging infrastructure, pressure reductions and pipeline repairs resulting from liquid Integrity Management Program inspections, and other reasons have highlighted the need to ensure the transportation of our Nation’s energy supply is not interrupted by capacity restrictions. Identifying pipeline transportation capacity restrictions will facilitate future initiatives to address those restrictions.

SUBSECTION 3(E). COST REIMBURSEMENTS.

Subsection 3(e) “Cost Recovery For Design Reviews” authorizes PHMSA to receive compensation from project applicants for design review, consulting, and field support that the agency performs for proposed LNG facilities and transmission pipeline projects. This subsection places the associated financial burden on the applicant who stands to realize the gain from the proposed project, rather than all pipeline operators sharing the expenses associated with time-consuming design reviews.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

In addition to authorizing the pipeline safety program for the next four-year cycle, this section synchronizes PHMSA’s pipeline and hazmat reauthorization cycles by extending the hazmat authorization by two years.