

2 **2SHB 2420 - H AMD 493 ADOPTED 2-14-00**
3 By Representative Linville

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** (1) The intent of this act is to protect
8 the health and safety of the citizens of the state of Washington and
9 the 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 amended). In addition, it is the intent of this act to provide policy
19 direction for the development of state pipeline safety programs in the
20 event of a delegation of authority, or the provision of direct
21 authority, to the state for inspection of interstate pipelines and
22 enforcement of state and federal pipeline safety requirements.

23 (3) It is also the intent of the legislature that the governor work
24 with the state congressional delegation in seeking the following
25 improvements to the federal pipeline safety act when it is being
26 reauthorized:

27 (a) The elimination of federal preemption; or

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

30 (i) The regulation of interstate hazardous liquid and gas pipelines
31 using standards equal to or more stringent than federal standards; and

32 (ii) The enforcement of state and federal requirements related to
33 pipeline safety.

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

- 1 (a) Requirements for rapid shutdown of ruptured pipelines;
2 (b) Periodic inspection and testing of pipelines; and
3 (c) Continuing education and certification of pipeline operators.

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

7 (6) While the legislature acknowledges that serious accidents have
8 occurred for hazardous liquid and gas pipelines in this nation and
9 elsewhere, it recognizes that there are fundamental differences between
10 hazardous liquid pipelines and gas pipelines and that a different
11 system of safety regulations must be applied for each kind of pipeline.

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

14 (1) "Commission" means the utilities and transportation commission.

15 (2) "Department" means the department of ecology.

16 (3) "Failsafe system" means a system or device that prevents a
17 pipeline from exceeding its maximum operating pressure.

18 (4) "Gas" means natural gas, flammable gas, or toxic or corrosive
19 gas.

20 (5) "Hazardous liquid" means: (a) Petroleum, petroleum products,
21 or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195
22 in effect March 1, 1998; and (b) carbon dioxide. The department by
23 rule may incorporate by reference other substances designated as
24 hazardous by the secretary of transportation under 49 U.S.C. Sec.
25 60101(a)(4).

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

28 (7) "Person" means an individual, partnership, franchise holder,
29 association, corporation, a state, a city, a county, or any subdivision
30 or instrumentality of a state, and its employees, agents, or legal
31 representatives.

32 (8) "Pipeline" or "pipeline system" means all parts of a pipeline
33 facility through which hazardous liquid, gas, or carbon dioxide moves
34 in transportation, including, but not limited to, line pipe, pumping
35 units, fabricated assemblies associated with pumping units, metering
36 and delivery stations and fabricated assemblies therein, breakout
37 tanks, and excluding process pipelines as defined in chapter 173-180A
38 WAC, as it exists on the effective date of this act.

1 (9) "Pipeline company" means a person or entity constructing,
2 owning, or operating a pipeline for transporting hazardous liquid or
3 gas. For the purposes of this act, a pipeline company does not
4 include: (a) Distribution systems owned and operated under franchise
5 for the sale, delivery, or distribution of natural gas at retail; or
6 (b) excavation contractors or other contractors that contract with a
7 pipeline company.

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

11 (11) "Safety management systems" means management systems that
12 include coordinated interdisciplinary evaluations of the effect of
13 significant changes to a pipeline system before such changes are
14 implemented.

15 NEW SECTION. **Sec. 3.** The hazardous liquid pipeline safety account
16 is created in the custody of the state treasurer. All receipts from
17 the federal office of pipeline safety and any other state or federal
18 funds provided for hazardous liquid pipeline safety must be deposited
19 in the account. Moneys in the account may be spent only after
20 appropriation. Expenditures from the account may be used only for
21 funding the pipeline safety program within the department of ecology.
22 Only the director of the department or the director's designee may
23 authorize expenditures from the account.

24 NEW SECTION. **Sec. 4.** (1) The department is responsible for the
25 administration and enforcement of all laws related to hazardous liquid
26 pipeline safety to the extent not prohibited by federal law. The
27 department shall immediately seek federal certification in order to
28 administer and enforce all laws related to hazardous liquids pipeline
29 safety. When federal certification is received by the department,
30 authority for the hazardous liquid pipeline safety program as
31 authorized under RCW 81.88.040 shall transfer from the commission to
32 the department. When the department becomes certified to regulate
33 intrastate hazardous liquid pipeline safety, it shall apply the
34 existing federal pipeline safety standards. Upon exercising delegated
35 or direct authority to regulate interstate pipeline safety, the
36 department shall ensure that intrastate and interstate pipelines are
37 regulated to the same safety standards.

1 (2) By December 1, 2000, the department shall develop for the
2 review of the legislature in the 2001 session a pipeline safety program
3 that promotes protection of public health and the environment. This
4 program shall include the following elements:

5 (a) Requirements for operators of pipelines to develop and
6 implement structural integrity management plans;

7 (b) A schedule of inspection and testing within the pipeline system
8 of:

9 (i) All mechanical components;

10 (ii) All electronic components; and

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

14 (c) Failsafe systems;

15 (d) Safety management systems;

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

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

19 (g) Reporting requirements related to emergency situations,
20 including emergency shutdowns;

21 (h) Requirements related to the training and certification of
22 personnel who operate pipelines and pipeline systems;

23 (i) Measures aimed at the prevention of third-party excavation
24 damage to pipelines through the establishment and required use of a
25 one-number locator system and through development of a training program
26 available to municipal workers and construction workers employed by a
27 pipeline company or employed by a construction company working under
28 contract to a pipeline company.

29 (j) Recommendations for funding and potential fund sources for
30 implementing the entire program and each program element.

31 (3) In providing this program to the legislature for review as
32 provided in subsection (2) of this section, the department shall
33 clearly indicate whether federal authority for each program element
34 exists or must be delegated. The department shall also develop a
35 legislative proposal for consideration by the legislature that
36 authorizes the state to implement the program elements for which it has
37 received delegation of authority from the federal office of pipeline
38 safety or direct authority under the federal pipeline safety act. Upon
39 review of the department's program by the legislature in the 2001

1 session, the department shall implement the program elements for which
2 it has authority.

3 (4) After the state has received delegation of authority or direct
4 authority to regulate interstate pipeline safety, the program elements
5 in subsection (2) of this section shall be implemented through
6 operations safety plans submitted by operators of pipelines to the
7 department for approval. The department shall approve such plans after
8 they have been deemed fit for service. A plan shall be deemed fit for
9 service when it results in pipelines that are designed, developed,
10 constructed, operated, and periodically modified to provide protection
11 of public safety and the environment.

12 (5) The department shall serve as the single point of contact
13 within the state for information related to hazardous liquid pipeline
14 safety and shall provide technical assistance on hazardous liquid
15 pipeline safety to local government authorities upon request.

16 (6) The department shall evaluate proposals developed by the
17 federal office of pipeline safety and other agencies and organizations
18 related to methods and technologies for testing the integrity of
19 hazardous liquid pipeline structure, leak detection, and other elements
20 of pipeline operation.

21 NEW SECTION. **Sec. 5.** (1) The department and the commission shall
22 jointly support the governor in seeking delegation of federal authority
23 to inspect hazardous liquid and gas interstate pipelines and enforce
24 state and federal pipeline safety requirements. The department and the
25 commission shall establish and submit to the United States secretary of
26 transportation an inspection program that complies with requirements
27 for delegated interstate agent authority. If the secretary of
28 transportation delegates authority to the state as provided in this
29 subsection, the department and the commission, at a minimum, shall do
30 the following to carry out the delegated federal authority:

31 (a) Inspect hazardous liquid and gas pipelines periodically as
32 specified in the inspection program;

33 (b) Provide for the testing of hazardous liquid and gas pipelines
34 as authorized by federal law and regulation; and

35 (c) File reports with the United States secretary of transportation
36 as required to maintain the delegated authority.

37 (2) In addition, the department and commission shall inspect any
38 record, map, or written procedure required by federal law to be kept by

1 a pipeline company concerning reportable releases of hazardous liquid,
2 or of gas releases as defined under state regulation, and the design,
3 construction, testing, or operation and maintenance of pipelines.

4 **Sec. 6.** RCW 81.88.040 and 1998 c 123 s 1 are each amended to read
5 as follows:

6 (1) The definitions in this subsection apply throughout this
7 section unless the context clearly requires otherwise.

8 (a) "Pipeline company" means a person or entity constructing,
9 owning, or operating an intrastate pipeline for transporting hazardous
10 liquid or gas, whether or not such a person or entity is a public
11 service company otherwise regulated by the commission. For the
12 purposes of this section, a pipeline company does not include: (i)
13 Distribution systems owned and operated under franchise for the sale,
14 delivery, or distribution of natural gas at retail; or (ii) excavation
15 contractors or other contractors that contract with a pipeline company.

16 (b) "Hazardous liquid" means: (i) Petroleum, petroleum products,
17 or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195
18 in effect March 1, 1998; and (ii) carbon dioxide. The commission by
19 rule may incorporate by reference other substances designated as
20 hazardous by the secretary of transportation under 49 U.S.C. Sec.
21 60101(a)(4).

22 (c) "Gas" means natural gas, flammable gas, or gas which is toxic
23 or corrosive.

24 (2) The commission shall adopt by rule intrastate pipeline safety
25 standards for pipeline transportation and pipeline facilities that:
26 (a) Apply to pipeline companies transporting hazardous liquids or gas;
27 (b) cover the design, construction, and operation of pipelines
28 transporting hazardous liquids or gas; and (c) require pipeline
29 companies to design, construct, and maintain their pipeline facilities
30 so they are safe and efficient. The commission shall only adopt rules
31 pertaining to interstate pipeline safety standards if it is delegated
32 authority or provided direct authority by the federal government to
33 adopt such rules.

34 (3) A person, officer, agent, or employee of a pipeline company
35 who, as an individual or acting as an officer, agent, or employee of
36 such a company, violates or fails to comply with this section or a rule
37 adopted under this section, or who procures, aids, or abets another

1 person or entity in the violation of or noncompliance with this section
2 or a rule adopted under this section, is guilty of a gross misdemeanor.

3 (4)(a) A pipeline company, or any person, officer, agent, or
4 employee of a pipeline company that violates a provision of this
5 section, or a rule adopted under this section, is subject to a civil
6 penalty to be assessed by the commission.

7 (b) The commission shall adopt rules: (i) Setting penalty amounts,
8 but may not exceed the penalties specified in the federal pipeline
9 safety laws, 49 U.S.C. Sec. 60101 et seq.; (ii) establishing procedures
10 for mitigating penalties assessed; and (iii) incorporating by reference
11 other substances designated as hazardous by the secretary of
12 transportation under 49 U.S.C. Sec. 60101(a)(4).

13 (c) In determining the amount of the penalty, the commission shall
14 consider: (i) The appropriateness of the penalty in relation to the
15 position of the person charged with the violation; (ii) the gravity of
16 the violation; and (iii) the good faith of the person or company
17 charged in attempting to achieve compliance after notification of the
18 violation.

19 (d) The amount of the penalty may be recovered in a civil action in
20 the superior court of Thurston county or of some other county in which
21 the violator may do business. In all actions for recovery, the rules
22 of evidence shall be the same as in ordinary civil actions. All
23 penalties recovered under this section must be paid into the state
24 treasury and credited to the public service revolving fund.

25 (5) Nothing in this section duplicates the authority of the energy
26 facility site evaluation council under chapter 80.50 RCW.

27 NEW SECTION. **Sec. 7.** (1) Upon receipt of federal certification
28 for hazardous liquids and natural gas pipeline safety, all powers,
29 duties, and functions of the utilities and transportation commission
30 pertaining to hazardous liquid pipeline safety are transferred to the
31 department of ecology. Responsibilities for the safety of gas
32 pipelines shall remain with the commission. Such powers, duties, and
33 functions transferred to the department of ecology do not include rate
34 setting as provided in chapters 80.28, 80.24, and 81.24 RCW. All
35 references to the commission or the utilities and transportation
36 commission in the Revised Code of Washington shall be construed to mean
37 the director or the department of ecology when referring to the
38 functions transferred in this section.

1 (2)(a) All reports, documents, surveys, books, records, files,
2 papers, or written material in the possession of the utilities and
3 transportation commission pertaining to the powers, functions, and
4 duties transferred shall be delivered to the custody of the department
5 of ecology. All cabinets, furniture, office equipment, motor vehicles,
6 and other tangible property employed by the utilities and
7 transportation commission in carrying out the powers, functions, and
8 duties pertinent to hazardous liquid pipeline safety transferred shall
9 be made available to the department of ecology. All funds, credits, or
10 other assets held in connection with the powers, functions, and duties
11 transferred shall be assigned to the department of ecology.

12 (b) Any appropriations made to the utilities and transportation
13 commission for carrying out the powers, functions, and duties pertinent
14 to hazardous liquid pipeline safety transferred shall, on the effective
15 date of this section, be divided proportionally based on program
16 responsibilities and shared with the department of ecology.

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

23 (3) All employees of the utilities and transportation commission
24 engaged in performing the powers, functions, and duties relative to
25 hazardous liquid pipeline safety are transferred to the jurisdiction of
26 the department of ecology. All employees classified under chapter
27 41.06 RCW, the state civil service law, are assigned to the department
28 of ecology to perform their usual duties upon the same terms as
29 formerly, without any loss of rights, subject to any action that may be
30 appropriate thereafter in accordance with the laws and rules governing
31 state civil service.

32 (4) All rules and all pending business before the utilities and
33 transportation commission pertaining to the powers, functions, and
34 duties pertinent to hazardous liquid pipeline safety transferred shall
35 be continued and acted upon by the department of ecology. All existing
36 contracts and obligations shall remain in full force and shall be
37 performed by the department of ecology.

38 (5) The transfer of the powers, duties, functions, and personnel of
39 the utilities and transportation commission shall not affect the

1 validity of any act performed before the effective date of this
2 section.

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

9 (7) Nothing contained in this section may be construed to alter any
10 existing collective bargaining unit or the provisions of any existing
11 collective bargaining agreement until the agreement has expired or
12 until the bargaining unit has been modified by action of the personnel
13 board as provided by law.

14 NEW SECTION. **Sec. 8.** (1) A pipeline safety committee is
15 established to advise the department, the commission, and other
16 appropriate federal, state, and local government agencies and officials
17 on matters relating to hazardous liquid and gas pipeline safety,
18 routing, construction, operation, and maintenance. The committee shall
19 not exceed fifteen members, exclusive of nonvoting state agency
20 representatives. Members of the committee shall be appointed by the
21 governor to staggered three-year terms and shall consist of members of
22 the general public, elected officials from cities and counties in which
23 pipelines are located, and the hazardous liquid and gas pipeline
24 industry. A representative of the department of ecology and of the
25 utilities and transportation commission shall each sit on the committee
26 as nonvoting members. The governor may designate other nonvoting
27 representatives of state agencies to serve on the committee as needed.
28 The chair of the committee shall be appointed by the governor from
29 among the members of the general public. The committee shall review
30 and comment on proposed rules and on the operation of the state
31 pipeline safety program.

32 (2) All necessary staff support for the committee shall be provided
33 by the department.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 48.48 RCW
35 to read as follows:

36 (1) In consultation with the emergency management program within
37 the state military department, the department of ecology, the

1 commission, and local emergency services organizations, the chief of
2 the Washington state patrol, through the director of fire protection or
3 his or her authorized deputy, shall:

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

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

9 (2) The chief of the Washington state patrol, through the director
10 of fire protection or his or her deputy, shall develop curricula for
11 training local first responders to deal with pipeline accidents. The
12 curricula shall be developed in conjunction with pipeline companies and
13 local first responders, and shall include a timetable and costs for
14 providing training as defined in the curricula to all communities
15 housing pipelines. Separate curricula shall be developed for hazardous
16 liquid and gas pipelines so that the differences between pipelines may
17 be recognized and appropriate accident responses provided. The need
18 for a training program for regional incident management teams shall
19 also be evaluated.

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

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

27 **Sec. 10.** RCW 19.122.020 and 1984 c 144 s 2 are each amended to
28 read as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this chapter:

31 (1) "Business day" means any day other than Saturday, Sunday, or a
32 legal local, state, or federal holiday.

33 (2) "Damage" includes the substantial weakening of structural or
34 lateral support of an underground facility, penetration, impairment, or
35 destruction of any underground protective coating, housing, or other
36 protective device, or the severance, partial or complete, of any
37 underground facility to the extent that the project owner or the
38 affected utility owner determines that repairs are required.

1 (3) "Emergency" means any condition constituting a clear and
2 present danger to life or property, or a customer service outage.

3 (4) "Excavation" means any operation in which earth, rock, or other
4 material on or below the ground is moved or otherwise displaced by any
5 means, except the tilling of soil less than twelve inches in depth for
6 agricultural purposes, or road and ditch maintenance that does not
7 change the original road grade or ditch flowline.

8 (5) "Excavator" means any person who engages directly in
9 excavation.

10 (6) "Identified facility" means any underground facility which is
11 indicated in the project plans as being located within the area of
12 proposed excavation.

13 (7) "Identified but unlocatable underground facility" means an
14 underground facility which has been identified but cannot be located
15 with reasonable accuracy.

16 (8) "Locatable underground facility" means an underground facility
17 which can be field-marked with reasonable accuracy.

18 (9) "Marking" means the use of stakes, paint, or other clearly
19 identifiable materials to show the field location of underground
20 facilities, in accordance with the current color code standard of the
21 American public works association. Markings shall include
22 identification letters indicating the specific type of the underground
23 facility.

24 (10) "Person" means an individual, partnership, franchise holder,
25 association, corporation, a state, a city, a county, or any subdivision
26 or instrumentality of a state, and its employees, agents, or legal
27 representatives.

28 (11) "Pipeline" or "pipeline system" means all parts of a pipeline
29 facility through which hazardous liquid, gas, or carbon dioxide moves
30 in transportation, including, but not limited to, line pipe, pumping
31 units, fabricated assemblies associated with pumping units, metering
32 and delivery stations and fabricated assemblies therein, and breakout
33 tanks, and excluding process pipelines and transfer pipelines as
34 defined in chapter 173-180A WAC, as it exists on the effective date of
35 this act.

36 (12) "Pipeline company" means a person or entity constructing,
37 owning, or operating a pipeline for transporting hazardous liquid or
38 gas. For the purposes of this section, a pipeline company does not
39 include: (a) Distribution systems owned and operated under franchise

1 for the sale, delivery, or distribution of natural gas at retail; or
2 (b) excavation contractors or other contractors that contract with a
3 pipeline company.

4 (13) "Reasonable accuracy" means location within twenty-four inches
5 of the outside dimensions of both sides of an underground facility.

6 ~~((12))~~ (14) "Underground facility" means any item buried or
7 placed below ground for use in connection with the storage or
8 conveyance of water, sewage, electronic, telephonic or telegraphic
9 communications, cablevision, electric energy, petroleum products, gas,
10 gaseous vapors, hazardous liquids, or other substances and including
11 but not limited to pipes, sewers, conduits, cables, valves, lines,
12 wires, manholes, attachments, and those parts of poles or anchors below
13 ground. This definition does not apply to hazardous liquid or gas
14 pipelines as defined in subsection (11) of this section.

15 ~~((13))~~ (15) "One-number locator service" means a service through
16 which a person can notify utilities and request field-marking of
17 underground facilities.

18 NEW SECTION. Sec. 11. A new section is added to chapter 19.122
19 RCW to read as follows:

20 (1) By December 31, 2000, the utilities and transportation
21 commission shall establish or cause to be established a single state-
22 wide toll-free telephone number to be used for referring excavators to
23 the appropriate one-number locator service.

24 (2) The utilities and transportation commission, in consultation
25 with the Washington utilities coordinating council, shall establish
26 minimum standards and best management practices for one-number locator
27 services consistent with the recommendations of the governor's fuel
28 accident prevention and response team issued in December 1999. By
29 December 31, 2000, the commission shall provide its recommendations to
30 the appropriate standing committees of the house of representatives and
31 the senate.

32 (3) One-number locator services shall be operated by
33 nongovernmental agencies.

34 **Sec. 12.** RCW 19.122.030 and 1988 c 99 s 1 are each amended to read
35 as follows:

36 Before commencing any excavation, the excavator shall provide
37 notice of the scheduled commencement of excavation to all owners of

1 underground facilities and to all pipeline companies through a one-
2 number locator service. All owners of underground facilities and all
3 pipeline companies within a one-number locator service area shall
4 subscribe to the service. One number locator service rates for cable
5 television companies will be based on the amount of their underground
6 facilities. If no one-number locator service is available, notice
7 shall be provided individually to those owners of underground
8 facilities and to those pipeline companies known to or suspected of
9 having underground facilities or pipelines within the area of proposed
10 excavation. The notice shall be communicated to the owners of
11 underground facilities and to pipeline companies not less than two
12 business days or more than ten business days before the scheduled date
13 for commencement of excavation, unless otherwise agreed by the parties.

14 Upon receipt of the notice provided for in this section, the owner
15 of the underground facility and the pipeline company shall provide the
16 excavator with reasonably accurate information as to its locatable
17 underground facilities and the pipeline by surface-marking the location
18 of the facilities or pipeline. If there are identified but unlocatable
19 underground facilities or pipeline, the owner of such facilities and
20 the pipeline company shall provide the excavator with the best
21 available information as to their locations. The owner of the
22 underground facility and the pipeline company providing the information
23 shall respond no later than two business days after the receipt of the
24 notice or before the excavation time, at the option of the owner or
25 pipeline company, unless otherwise agreed by the parties. Excavators
26 shall not excavate until all known facilities and pipelines have been
27 marked. Once marked by the owner of the underground facility and
28 pipeline company, the excavator is responsible for maintaining the
29 markings. Excavators shall have the right to receive compensation from
30 the owner of the underground facility or the pipeline company for costs
31 incurred if the owner of the underground facility or the pipeline
32 company does not locate its facilities in accordance with this section.

33 The owner of the underground facility and the pipeline company
34 shall have the right to receive compensation for costs incurred in
35 responding to excavation notices given less than two business days
36 prior to the excavation from the excavator.

37 An owner of underground facilities (~~is~~) and the pipeline company
38 are not required to indicate the presence of existing service laterals
39 or appurtenances if the presence of existing service laterals or

1 appurtenances on the site of the construction project can be determined
2 from the presence of other visible facilities, such as buildings,
3 manholes, or meter and junction boxes on or adjacent to the
4 construction site.

5 Emergency excavations are exempt from the time requirements for
6 notification provided in this section.

7 If the excavator, while performing the contract, discovers
8 underground facilities which are not identified, the excavator shall
9 cease excavating in the vicinity of the facility and immediately notify
10 the owner or operator of such facilities, or the one-number locator
11 service. If the excavator, while performing the contract, discovers an
12 underground pipeline which is not identified, the excavator shall cease
13 excavating in the vicinity of the pipeline and immediately notify the
14 pipeline company and the one-number locator service.

15 **Sec. 13.** RCW 19.122.040 and 1984 c 144 s 4 are each amended to
16 read as follows:

17 (1) Project owners shall indicate in bid or contract documents the
18 existence of underground facilities and pipelines known by the project
19 owner to be located within the proposed area of excavation. The
20 following shall be deemed changed or differing site conditions:

21 (a) An underground facility or pipeline not identified as required
22 by this chapter or other provision of law; and

23 (b) An underground facility or pipeline not located, as required by
24 this chapter or other provision of law, by the project owner or
25 excavator if the project owner or excavator is also a utility.

26 (2) An excavator shall use reasonable care to avoid damaging
27 underground facilities and pipelines. An excavator shall:

28 (a) Determine the precise location of underground facilities and
29 pipelines which have been marked;

30 (b) Plan the excavation to avoid damage to or minimize interference
31 with underground facilities and pipelines in and near the excavation
32 area; and

33 (c) Provide such support for underground facilities and pipelines
34 in and near the construction area, including during backfill
35 operations, as may be reasonably necessary for the protection of such
36 facilities and pipelines.

37 (3) If an underground facility or pipeline is damaged and such
38 damage is the consequence of the failure to fulfill an obligation under

1 this chapter, the party failing to perform that obligation shall be
2 liable for any damages. Any clause in an excavation contract which
3 attempts to allocate liability, or requires indemnification to shift
4 the economic consequences of liability, different from the provisions
5 of this chapter is against public policy and unenforceable. Nothing in
6 this chapter prevents the parties to an excavation contract from
7 contracting with respect to the allocation of risk for changed or
8 differing site conditions.

9 (4) In any action brought under this section, the prevailing party
10 is entitled to reasonable attorneys' fees.

11 NEW SECTION. **Sec. 14.** By September 1, 2000, the utilities and
12 transportation commission and the department of ecology shall jointly
13 provide notice to all appropriate contractors about new hazardous
14 liquid and gas pipeline safety and excavation requirements.

15 NEW SECTION. **Sec. 15.** (1) After a pipeline company has been
16 notified by an excavator pursuant to RCW 19.122.030 that excavation
17 work will uncover any portion of the pipeline, the pipeline company
18 shall ensure that the pipeline section in the vicinity of the
19 excavation is examined for damage prior to being reburied.

20 (2) An excavator who, in the course of excavation, contacts or
21 damages a hazardous liquid or gas pipeline, shall immediately notify
22 the pipeline company and the one-number locator service. The notice
23 shall also specify, to the best of the excavator's knowledge, whether
24 the damage has resulted in a release of hazardous liquid or gas. If
25 the damage causes an emergency condition, the excavator causing the
26 damage shall also immediately alert the appropriate local public safety
27 agencies and take all appropriate steps to ensure the public safety.
28 No damaged hazardous liquid or gas pipeline may be buried until it is
29 repaired or relocated by the pipeline operator.

30 (3) Immediately upon receiving information of third-party damage to
31 a hazardous liquid or gas pipeline that does not result in a reportable
32 release of hazardous liquid or gas release as defined in state
33 regulation, the company that owns or operates the pipeline shall
34 immediately conduct a visual inspection of the damaged pipeline to
35 determine whether flow through the pipeline should be terminated.
36 After visual inspection, a pipeline company shall determine whether the
37 damaged pipeline section should be replaced or repaired, or whether

1 pipeline operation may be safely resumed. A record of the company's
2 inspection report and test results shall be provided to the department
3 or the commission consistent with reporting requirements under 49
4 C.F.R. 195 Subpart B.

5 (4) Immediately upon receiving information of third-party damage to
6 a hazardous liquid or gas pipeline that results in a reportable release
7 of hazardous liquid or gas release as defined in state regulation, the
8 company that owns or operates the pipeline shall immediately terminate
9 the flow of hazardous liquid or gas until it has visually inspected the
10 damaged pipeline, determined and addressed the cause of the release,
11 and determined that pipeline operation may be safely resumed. Pipeline
12 companies shall immediately notify local first responders and the
13 department of any reportable release of a hazardous liquid from a
14 pipeline. Pipeline companies shall immediately notify first responders
15 and the commission of any gas release as defined in state regulation
16 from a pipeline.

17 **Sec. 16.** RCW 19.122.070 and 1984 c 144 s 7 are each amended to
18 read as follows:

19 (1) Any person who violates any provision of this chapter, and
20 which violation results in damage to underground facilities, is subject
21 to a civil penalty of not more than one thousand dollars for each
22 violation. All penalties recovered in such actions shall be deposited
23 in the general fund.

24 (2) Any excavator who wilfully or maliciously damages a field-
25 marked underground facility shall be liable for treble the costs
26 incurred in repairing or relocating the facility. In those cases in
27 which an excavator fails to notify known underground facility owners or
28 the one-number locator service, any damage to the underground facility
29 shall be deemed wilful and malicious and shall be subject to treble
30 damages for costs incurred in repairing or relocating the facility.

31 (3) This chapter does not affect any civil remedies for personal
32 injury or for property damage, including that to underground
33 facilities, nor does this chapter create any new civil remedies for
34 such damage.

35 (4) This section does not apply to damages to a hazardous liquid or
36 gas pipeline. Damages to a hazardous liquid or gas pipeline are
37 subject to the provisions of section 17 of this act.

1 NEW SECTION. **Sec. 17.** A new section is added to chapter 19.122
2 RCW to read as follows:

3 (1) Any excavator who fails to notify a one-number locator service
4 as required by RCW 19.122.030 and causes damage to a hazardous liquids
5 pipeline or gas pipeline is subject to a civil penalty of not less than
6 one thousand dollars for the first violation. The maximum civil
7 penalty under this section for multiple violations may not exceed ten
8 thousand dollars for each violation. In determining the amount of the
9 penalty for multiple violations, the department shall consider:

10 (a) The appropriateness of the penalty in relation to the position
11 of the person charged with the violation;

12 (b) The gravity of the violation; and

13 (c) The good faith of the person charged in attempting to achieve
14 compliance with the requirements of the law.

15 (2) All penalties under this section shall be deposited into the
16 hazardous liquid pipeline safety account established in section 3 of
17 this act.

18 (3) Any person who willfully or maliciously damages a hazardous
19 liquids pipeline or gas pipeline, or any person who fails to notify a
20 one-number locator service as required by RCW 19.122.030 and causes
21 damage to a hazardous liquids pipeline or gas pipeline, is liable for
22 treble damages for costs incurred in repairing or relocating the
23 pipeline.

24 (4) This section does not affect any civil remedies for personal
25 injury or for property damage.

26 NEW SECTION. **Sec. 18.** Upon receiving delegated or direct
27 authority for pipeline safety, the department shall adopt rules: (1)
28 Setting penalty amounts not in excess of the penalties specified in the
29 federal pipeline safety laws, 49 U.S.C. Sec. 60101 et seq.; (2)
30 establishing procedures for mitigating penalties assessed; and (3)
31 incorporating by reference other substances designated as hazardous by
32 the secretary of transportation under 49 U.S.C. Sec. 60101(a)(4).

33 NEW SECTION. **Sec. 19.** If any part of this act is found to be in
34 conflict with federal requirements that are a prescribed condition to
35 the allocation of federal funds to the state, the conflicting part of
36 this act is inoperative solely to the extent of the conflict and with
37 respect to the agencies directly affected, and this finding does not

1 affect the operation of the remainder of this act in its application to
2 the agencies concerned. Rules adopted under this act must meet federal
3 requirements that are a necessary condition to the receipt of federal
4 funds by the state.

5 NEW SECTION. **Sec. 20.** This act may be known and cited as the
6 Washington state pipeline safety act.

7 NEW SECTION. **Sec. 21.** Sections 1 through 5, 7, 8, 14, 15, and 18
8 through 20 of this act constitute a new chapter in Title 70 RCW.

9 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 immediately."

13 Correct the title.

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