
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2420

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 81.88.040, 19.122.020, 19.122.030, 19.122.040, and 19.122.070; adding
3 a new section to chapter 48.48 RCW; adding new sections to chapter
4 19.122 RCW; adding a new chapter to Title 70 RCW; prescribing
5 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 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

1 event of a delegation of authority, or the provision of direct
2 authority, to the state for inspection of interstate pipelines and
3 enforcement of state and federal pipeline safety requirements.

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

8 (a) The elimination of federal preemption; or

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

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

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

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

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

25 (6) While the legislature acknowledges that serious accidents have
26 occurred for hazardous liquid and gas pipelines in this nation and
27 elsewhere, it recognizes that there are fundamental differences between
28 hazardous liquid pipelines and gas pipelines and that a different
29 system of safety regulations must be 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) "Commission" means the utilities and transportation commission.

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

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

36 (4) "Gas" means natural gas, flammable gas, or toxic or corrosive
37 gas.

1 (5) "Hazardous liquid" means: (a) Petroleum, petroleum products,
2 or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195
3 in effect March 1, 1998; and (b) carbon dioxide. The department by
4 rule may incorporate by reference other substances designated as
5 hazardous by the secretary of transportation under 49 U.S.C. Sec.
6 60101(a)(4).

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

9 (7) "Person" means an individual, partnership, franchise holder,
10 association, corporation, a state, a city, a county, or any subdivision
11 or instrumentality of a state, and its employees, agents, or legal
12 representatives.

13 (8) "Pipeline" or "pipeline system" means all parts of a pipeline
14 facility through which hazardous liquid or gas moves in transportation,
15 including, but not limited to, line pipe, pumping units, fabricated
16 assemblies associated with pumping units, metering and delivery
17 stations and fabricated assemblies therein, breakout tanks, and
18 excluding process pipelines and transfer pipelines as defined in
19 chapter 173-180A WAC, as it exists on the effective date of this act.

20 (9) "Pipeline company" means a person or entity constructing,
21 owning, or operating a pipeline for transporting hazardous liquid or
22 gas. For the purposes of this act, a pipeline company does not
23 include: (a) Distribution systems owned and operated under franchise
24 for the sale, delivery, or distribution of natural gas at retail; or
25 (b) excavation contractors or other contractors that contract with a
26 pipeline company.

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

30 (11) "Safety management systems" means management systems that
31 include coordinated interdisciplinary evaluations of the effect of
32 significant changes to a pipeline system before such changes are
33 implemented.

34 NEW SECTION. **Sec. 3.** The hazardous liquid pipeline safety account
35 is created in the custody of the state treasurer. All receipts from
36 the federal office of pipeline safety and any other state or federal
37 funds provided for hazardous liquid pipeline safety must be deposited
38 in the account. Moneys in the account may be spent only after

1 appropriation. Expenditures from the account may be used only for
2 funding the pipeline safety program within the department of ecology.
3 Only the director of the department or the director's designee may
4 authorize expenditures from the account.

5 NEW SECTION. **Sec. 4.** (1) The department is responsible for the
6 administration and enforcement of all laws related to hazardous liquid
7 pipeline safety to the extent not prohibited by federal law. Hazardous
8 liquid process pipelines and transfer pipelines will continue to be
9 regulated by the utilities and transportation commission. The
10 department shall immediately seek federal certification in order to
11 administer and enforce all laws related to hazardous liquids pipeline
12 safety. When federal certification is received by the department,
13 authority for the hazardous liquid pipeline safety program as
14 authorized under RCW 81.88.040 shall transfer from the commission to
15 the department. When the department becomes certified to regulate
16 intrastate hazardous liquid pipeline safety, it shall apply the
17 existing federal pipeline safety standards. Upon exercising delegated
18 or direct authority to regulate interstate pipeline safety, the
19 department shall ensure that intrastate and interstate pipelines are
20 regulated to the same safety standards.

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

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

27 (b) A schedule of inspection and testing within the pipeline system
28 of:

29 (i) All mechanical components;

30 (ii) All electronic components; and

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

34 (c) Failsafe systems;

35 (d) Safety management systems;

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

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

1 (g) Reporting requirements related to emergency situations,
2 including emergency shutdowns;

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

5 (i) Measures aimed at the prevention of third-party excavation
6 damage to pipelines through the establishment and required use of a
7 one-number locator system and through development of a training program
8 available to municipal workers and construction workers employed by a
9 pipeline company or employed by a construction company working under
10 contract to a pipeline company.

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

13 (3) In providing this program to the legislature for review as
14 provided in subsection (2) of this section, the department shall
15 clearly indicate whether federal authority for each program element
16 exists or must be delegated. The department shall also develop a
17 legislative proposal for consideration by the legislature that
18 authorizes the state to implement the program elements for which it has
19 received delegation of authority from the federal office of pipeline
20 safety or direct authority under the federal pipeline safety act. Upon
21 review of the department's program by the legislature in the 2001
22 session, the department shall implement the program elements for which
23 it has authority.

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

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

37 (6) The department shall evaluate proposals developed by the
38 federal office of pipeline safety and other agencies and organizations
39 related to methods and technologies for testing the integrity of

1 hazardous liquid pipeline structure, leak detection, and other elements
2 of pipeline operation.

3 NEW SECTION. **Sec. 5.** (1) The department and the commission shall
4 jointly support the governor in seeking delegation of federal authority
5 to inspect hazardous liquid and gas interstate pipelines and enforce
6 state and federal pipeline safety requirements. The department and the
7 commission shall establish and submit to the United States secretary of
8 transportation an inspection program that complies with requirements
9 for delegated interstate agent authority. If the secretary of
10 transportation delegates authority to the state as provided in this
11 subsection, the department and the commission, at a minimum, shall do
12 the following to carry out the delegated federal authority:

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

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

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

19 (2) In addition, the department and commission shall inspect any
20 record, map, or written procedure required by federal law to be kept by
21 a pipeline company concerning reportable releases of hazardous liquid,
22 or of gas releases as defined under state regulation, and the design,
23 construction, testing, or operation and maintenance of pipelines.

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

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

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

36 (b) "Hazardous liquid" means: (i) Petroleum, petroleum products,
37 or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195

1 in effect March 1, 1998; and (ii) carbon dioxide. The commission by
2 rule may incorporate by reference other substances designated as
3 hazardous by the secretary of transportation under 49 U.S.C. Sec.
4 60101(a)(4).

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

7 (2) The commission shall adopt by rule intrastate pipeline safety
8 standards for pipeline transportation and pipeline facilities that:

9 (a) Apply to pipeline companies transporting hazardous liquids or gas;

10 (b) cover the design, construction, and operation of pipelines
11 transporting hazardous liquids or gas; and (c) require pipeline
12 companies to design, construct, and maintain their pipeline facilities
13 so they are safe and efficient. The commission shall only adopt rules
14 pertaining to interstate pipeline safety standards if it is delegated
15 authority or provided direct authority by the federal government to
16 adopt such rules.

17 (3) A person, officer, agent, or employee of a pipeline company
18 who, as an individual or acting as an officer, agent, or employee of
19 such a company, violates or fails to comply with this section or a rule
20 adopted under this section, or who procures, aids, or abets another
21 person or entity in the violation of or noncompliance with this section
22 or a rule adopted under this section, is guilty of a gross misdemeanor.

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

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

33 (c) In determining the amount of the penalty, the commission shall
34 consider: (i) The appropriateness of the penalty in relation to the
35 position of the person charged with the violation; (ii) the gravity of
36 the violation; and (iii) the good faith of the person or company
37 charged in attempting to achieve compliance after notification of the
38 violation.

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

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

9 NEW SECTION. **Sec. 7.** (1) Upon receipt of federal certification
10 for hazardous liquids and natural gas pipeline safety, all powers,
11 duties, and functions of the utilities and transportation commission
12 pertaining to hazardous liquid pipeline safety are transferred to the
13 department of ecology. Responsibilities for the safety of gas
14 pipelines shall remain with the commission. Such powers, duties, and
15 functions transferred to the department of ecology do not include rate
16 setting as provided in chapters 80.28, 80.24, and 81.24 RCW. All
17 references to the commission or the utilities and transportation
18 commission in the Revised Code of Washington shall be construed to mean
19 the director or the department of ecology when referring to the
20 functions transferred in this section.

21 (2)(a) All reports, documents, surveys, books, records, files,
22 papers, or written material in the possession of the utilities and
23 transportation commission pertaining to the powers, functions, and
24 duties transferred shall be delivered to the custody of the department
25 of ecology. All cabinets, furniture, office equipment, motor vehicles,
26 and other tangible property employed by the utilities and
27 transportation commission in carrying out the powers, functions, and
28 duties pertinent to hazardous liquid pipeline safety transferred shall
29 be made available to the department of ecology. All funds, credits, or
30 other assets held in connection with the powers, functions, and duties
31 transferred shall be assigned to the department of ecology.

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

37 (c) Whenever any question arises as to the transfer of any
38 personnel, funds, books, documents, records, papers, files, equipment,

1 or other tangible property used or held in the exercise of the powers
2 and the performance of the duties and functions transferred, the
3 director of financial management shall make a determination as to the
4 proper allocation and certify the same to the state agencies concerned.

5 (3) All employees of the utilities and transportation commission
6 engaged in performing the powers, functions, and duties relative to
7 hazardous liquid pipeline safety are transferred to the jurisdiction of
8 the department of ecology. All employees classified under chapter
9 41.06 RCW, the state civil service law, are assigned to the department
10 of ecology to perform their usual duties upon the same terms as
11 formerly, without any loss of rights, subject to any action that may be
12 appropriate thereafter in accordance with the laws and rules governing
13 state civil service.

14 (4) All rules and all pending business before the utilities and
15 transportation commission pertaining to the powers, functions, and
16 duties pertinent to hazardous liquid pipeline safety transferred shall
17 be continued and acted upon by the department of ecology. All existing
18 contracts and obligations shall remain in full force and shall be
19 performed by the department of ecology.

20 (5) The transfer of the powers, duties, functions, and personnel of
21 the utilities and transportation commission shall not affect the
22 validity of any act performed before the effective date of this
23 section.

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

30 (7) Nothing contained in this section may be construed to alter any
31 existing collective bargaining unit or the provisions of any existing
32 collective bargaining agreement until the agreement has expired or
33 until the bargaining unit has been modified by action of the personnel
34 board as provided by law.

35 NEW SECTION. **Sec. 8.** (1) A pipeline safety committee is
36 established to advise the department, the commission, and other
37 appropriate federal, state, and local government agencies and officials
38 on matters relating to hazardous liquid and gas pipeline safety,

1 routing, construction, operation, and maintenance. The committee shall
2 not exceed fifteen members, exclusive of nonvoting state agency
3 representatives. Members of the committee shall be appointed by the
4 governor to staggered three-year terms and shall consist of members of
5 the general public, elected officials from cities and counties in which
6 pipelines are located, and the hazardous liquid and gas pipeline
7 industry. A representative of the department of ecology and of the
8 utilities and transportation commission shall each sit on the committee
9 as nonvoting members. The governor may designate other nonvoting
10 representatives of state agencies to serve on the committee as needed.
11 The chair of the committee shall be appointed by the governor from
12 among the members of the general public. The committee shall review
13 and comment on proposed rules and on the operation of the state
14 pipeline safety program.

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

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

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

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

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

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

1 for a training program for regional incident management teams shall
2 also be evaluated.

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

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

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

12 Unless the context clearly requires otherwise, the definitions in
13 this section apply throughout this chapter:

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

16 (2) "Damage" includes the substantial weakening of structural or
17 lateral support of an underground facility, penetration, impairment, or
18 destruction of any underground protective coating, housing, or other
19 protective device, or the severance, partial or complete, of any
20 underground facility to the extent that the project owner or the
21 affected utility owner determines that repairs are required.

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

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

29 (5) "Excavator" means any person who engages directly in
30 excavation.

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

34 (7) "Identified but unlocatable underground facility" means an
35 underground facility which has been identified but cannot be located
36 with reasonable accuracy.

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

1 (9) "Marking" means the use of stakes, paint, or other clearly
2 identifiable materials to show the field location of underground
3 facilities, in accordance with the current color code standard of the
4 American public works association. Markings shall include
5 identification letters indicating the specific type of the underground
6 facility.

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

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

18 (12) "Pipeline company" means a person or entity constructing,
19 owning, or operating a pipeline for transporting hazardous liquid or
20 gas. For the purposes of this section, a pipeline company does not
21 include: (a) Distribution systems owned and operated under franchise
22 for the sale, delivery, or distribution of natural gas at retail; or
23 (b) excavation contractors or other contractors that contract with a
24 pipeline company.

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

27 (~~(12)~~) (14) "Underground facility" means any item buried or
28 placed below ground for use in connection with the storage or
29 conveyance of water, sewage, electronic, telephonic or telegraphic
30 communications, cablevision, electric energy, petroleum products, gas,
31 gaseous vapors, hazardous liquids, or other substances and including
32 but not limited to pipes, sewers, conduits, cables, valves, lines,
33 wires, manholes, attachments, and those parts of poles or anchors below
34 ground. This definition does not apply to hazardous liquid or gas
35 pipelines as defined in subsection (11) of this section.

36 (~~(13)~~) (15) "One-number locator service" means a service through
37 which a person can notify utilities and request field-marking of
38 underground facilities.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.122
2 RCW to read as follows:

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

7 (2) The utilities and transportation commission, in consultation
8 with the Washington utilities coordinating council, shall establish
9 minimum standards and best management practices for one-number locator
10 services consistent with the recommendations of the governor's fuel
11 accident prevention and response team issued in December 1999. By
12 December 31, 2000, the commission shall provide its recommendations to
13 the appropriate standing committees of the house of representatives and
14 the senate.

15 (3) One-number locator services shall be operated by
16 nongovernmental agencies.

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

19 Before commencing any excavation, excluding agricultural tilling of
20 soil as defined in RCW 19.122.020, the excavator shall provide notice
21 of the scheduled commencement of excavation to all owners of
22 underground facilities and to all pipeline companies through a one-
23 number locator service. All owners of underground facilities and all
24 pipeline companies within a one-number locator service area shall
25 subscribe to the service. One number locator service rates for cable
26 television companies will be based on the amount of their underground
27 facilities. If no one-number locator service is available, notice
28 shall be provided individually to those owners of underground
29 facilities and to those pipeline companies known to or suspected of
30 having underground facilities or pipelines within the area of proposed
31 excavation. The notice shall be communicated to the owners of
32 underground facilities and to pipeline companies not less than two
33 business days or more than ten business days before the scheduled date
34 for commencement of excavation, unless otherwise agreed by the parties.

35 Upon receipt of the notice provided for in this section, the owner
36 of the underground facility and the pipeline company shall provide the
37 excavator with reasonably accurate information as to its locatable
38 underground facilities and the pipeline by surface-marking the location

1 of the facilities or pipeline. If there are identified but unlocatable
2 underground facilities or pipeline, the owner of such facilities and
3 the pipeline company shall provide the excavator with the best
4 available information as to their locations. The owner of the
5 underground facility and the pipeline company providing the information
6 shall respond no later than two business days after the receipt of the
7 notice or before the excavation time, at the option of the owner or
8 pipeline company, unless otherwise agreed by the parties. Excavators
9 shall not excavate until all known facilities and pipelines have been
10 marked. Once marked by the owner of the underground facility and
11 pipeline company, the excavator is responsible for maintaining the
12 markings. Excavators shall have the right to receive compensation from
13 the owner of the underground facility or the pipeline company for costs
14 incurred if the owner of the underground facility or the pipeline
15 company does not locate its facilities in accordance with this section.

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

20 An owner of underground facilities (~~is~~) and the pipeline company
21 are not required to indicate the presence of existing service laterals
22 or appurtenances if the presence of existing service laterals or
23 appurtenances on the site of the construction project can be determined
24 from the presence of other visible facilities, such as buildings,
25 manholes, or meter and junction boxes on or adjacent to the
26 construction site.

27 Emergency excavations are exempt from the time requirements for
28 notification provided in this section.

29 If the excavator, while performing the contract, discovers
30 underground facilities which are not identified, the excavator shall
31 cease excavating in the vicinity of the facility and immediately notify
32 the owner or operator of such facilities, or the one-number locator
33 service. If the excavator, while performing the contract, discovers an
34 underground pipeline which is not identified, the excavator shall cease
35 excavating in the vicinity of the pipeline and immediately notify the
36 pipeline company and the one-number locator service.

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

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

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

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

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

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

14 (b) Plan the excavation to avoid damage to or minimize interference
15 with underground facilities and pipelines in and near the excavation
16 area; and

17 (c) Provide such support for underground facilities and pipelines
18 in and near the construction area, including during backfill
19 operations, as may be reasonably necessary for the protection of such
20 facilities and pipelines.

21 (3) If an underground facility or pipeline is damaged and such
22 damage is the consequence of the failure to fulfill an obligation under
23 this chapter, the party failing to perform that obligation shall be
24 liable for any damages. Any clause in an excavation contract which
25 attempts to allocate liability, or requires indemnification to shift
26 the economic consequences of liability, different from the provisions
27 of this chapter is against public policy and unenforceable. Nothing in
28 this chapter prevents the parties to an excavation contract from
29 contracting with respect to the allocation of risk for changed or
30 differing site conditions.

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

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

NEW SECTION.

Sec. 15.

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

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

(3) Immediately upon receiving information of third-party damage to a hazardous liquid or gas pipeline that does not result in a reportable release of hazardous liquid or gas release as defined in state regulation, the company that owns or operates the pipeline shall immediately conduct a visual inspection of the damaged pipeline to determine whether flow through the pipeline should be terminated. After visual inspection, a pipeline company shall determine whether the damaged pipeline section should be replaced or repaired, or whether pipeline operation may be safely resumed. A record of the company's inspection report and test results shall be provided to the department or the commission consistent with reporting requirements under 49 C.F.R. 195 Subpart B.

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

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

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

8 (2) Any excavator who wilfully or maliciously damages a field-
9 marked underground facility shall be liable for treble the costs
10 incurred in repairing or relocating the facility. In those cases in
11 which an excavator fails to notify known underground facility owners or
12 the one-number locator service, any damage to the underground facility
13 shall be deemed wilful and malicious and shall be subject to treble
14 damages for costs incurred in repairing or relocating the facility.

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

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

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

24 (1) Any excavator, except a person engaged in the agricultural
25 tillage of soil as defined in RCW 19.122.020, who fails to notify a
26 one-number locator service as required by RCW 19.122.030 and causes
27 damage to a hazardous liquids pipeline or gas pipeline is subject to a
28 civil penalty of not less than one thousand dollars for the first
29 violation. The maximum civil penalty under this section for multiple
30 violations may not exceed ten thousand dollars for each violation. In
31 determining the amount of the penalty for multiple violations, the
32 department shall consider:

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

35 (b) The gravity of the violation; and

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

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

4 (3) Any person who willfully or maliciously damages a hazardous
5 liquids pipeline or gas pipeline, or any person who fails to notify a
6 one-number locator service as required by RCW 19.122.030 and causes
7 damage to a hazardous liquids pipeline or gas pipeline, is liable for
8 treble damages for costs incurred in repairing or relocating the
9 pipeline.

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

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

19 NEW SECTION. **Sec. 19.** If any part of this act is found to be in
20 conflict with federal requirements that are a prescribed condition to
21 the allocation of federal funds to the state, the conflicting part of
22 this act is inoperative solely to the extent of the conflict and with
23 respect to the agencies directly affected, and this finding does not
24 affect the operation of the remainder of this act in its application to
25 the agencies concerned. Rules adopted under this act must meet federal
26 requirements that are a necessary condition to the receipt of federal
27 funds by the state.

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

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

32 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

--- END ---