
California Underground Facilities Safe Excavation Board

April 8-9, 2024

Agenda Item No. 6 Information Item – Staff Report

PIPES Act of 2023

PRESENTER

Tony Marino, Executive Officer

SUMMARY

The “Promoting Innovation in Pipeline Efficiency and Safety (PIPES) Act of 2023” (H.R. 6494) was introduced to the U.S. House of Representatives on November 29, 2023, and it contains proposed amendments related to the Board’s interests.

STRATEGIC PLAN

2020 Strategic Plan Objective: Build Board operations to achieve compliance, reporting, and operational excellence in a resource-efficient manner.

BACKGROUND

Congress directed the Department of Transportation to develop pipeline safety regulations.¹ In 1979, Congress further subjected hazardous liquid pipelines to regulation.² In the intervening decades, Congress has passed several bills strengthening federal oversight of natural gas and hazardous liquid pipeline safety.

During its first meeting in January 2018, the Board adopted a legislative framework as policies. This framework included United States Code sections within the Pipeline Safety Act and federal regulations implementing those statutes. The Board reviews its legislative framework annually for changes in those statutes and regulations.

No state or federal laws included in Board policies were changed in 2023, but proposed a proposed update was introduced in the U.S. House of Representatives that affects sections within the Board’s legislative framework.

DISCUSSION

On November 29, 2023, a bill was introduced to the U.S. House of Representatives (H.R. 6494) known as the “Promoting Innovation in Pipeline Efficiency and Safety Act of 2023” or the

¹ [Natural Gas Pipeline Safety Act of 1968.](#)

² [Hazardous Liquid Pipeline Safety Act of 1979.](#)

“PIPES Act of 2023”.³ As introduced, the bill contains several proposals related to the Board’s interests.

Voluntary information sharing

The bill would create a federal voluntary reporting program, similar to NASA’s Confidential Aviation Reporting System, that would allow natural gas and hazardous liquid pipeline company employees to confidentially report safety issues to a federal body. The premise is that this type of system allows individuals to share information that they otherwise would not if it went through a company reporting structure, and the shared information would be anonymized to share with the entire industry to learn and improve their practices. The Board has discussed this type of confidential reporting mechanism in the past.⁴

Carbon Dioxide Pipelines

The bill would federally regulate carbon dioxide pipelines and integrate safety requirements into the existing requirements for gas and hazardous liquid pipelines. Specifically related to excavation safety, the bill would amend Title 49, Section 60116 of the United States Code (Public Education Programs) to require operators of carbon dioxide pipelines to “educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.”

Public Accessibility of Standards Incorporated by Reference

Existing federal law requires PHMSA to update the industry standards incorporated by reference in its regulations.⁵ The bill proposes to add the requirement that any standard incorporated by reference into regulation must be made freely available on a public website. Federal pipeline safety regulations have relied heavily on industry standards to govern proper construction and maintenance of buried pipelines, but those standards have generally been only available for purchase. This limits the visibility of federal law to those willing to pay for the standards. Over the past several years PHMSA has required industry standards bodies such as the American Petroleum Institute (API) and the American Society of Mechanical Engineers (ASME) to make standards incorporated by regulation available for free viewing. This bill’s proposal would specifically codify that practice. It would also require the Government Accountability Office to review compliance with the public posting standard.

³ [PIPES Act of 2023](#)

⁴ [November 8, 2018, Agenda Item No. 6., “Discussion on Confidential/Anonymous Reporting.”](#)

⁵ [49 USC § 60102\(l\)](#).

Excavation Safety Grants to States

One-Call Grants to States (49 USC § 6106)

Section 6106 of Title 49 of the United State Code governs the One-Call Grant program. Proposed changes would require a “state one-call program”—which is inclusive of state laws and 811 notification center practices—to consider implementing the following “leading practices”:

- (1) identify the size and scope of a one-call ticket for standard locate requests, including process exceptions for special large project tickets;*
- (2) restrict the longevity of a one-call ticket for standard locate requests, which may include process exceptions for special large project tickets;*
- (3) examine and limit exemptions to one-call programs to prevent common excavation damage incidents, including—*
 - (A) excavation or demolition performed by the owner of a single-family residential property;*
 - (B) any excavation of 18 inches or less when maintenance activities are performed;*
 - (C) repairing, connecting, adjusting, or conducting routine maintenance of a private or public underground utility facility; and*
 - (D) municipalities, public works organizations, and State departments of transportation for road maintenance;*
- (4) specify tolerance zone horizontal dimensions and requirements for hand-dig, hydro, vacuum excavation, and other nonintrusive methods;*
- (5) specify emergency excavation notification requirements, including defining emergency excavation and identifying the notification requirements for an emergency excavation;*
- (6) specify the responsibilities of the excavator, including the reporting of damages due to excavation activities;*
- (7) define who is an excavator and what is considered excavation;*
- (8) require the use of white lining or electronic white lining;*
- (9) require a positive response, such as the utility, municipality, or other entity placing the marks positively responds to the notification center and the excavator checks for a positive response before beginning excavation;*
- (10) encourage newly installed underground facilities to be locatable;*
- (11) require the marking of lines and laterals, including sewer lines and laterals;*
- (12) encourage training programs and requirements for third-party excavators performing excavation activities that are not subject to pipeline construction requirements under part 192 or part 195 of title 49, Code of Federal Regulations;*
- (13) encourage robust training for locate professionals; and*
- (14) encourage the use of commercially available technologies to locate underground*

facilities, such as geographic information systems and enhanced positive response.

The bill would require PHMSA, when making grants under this section, to consider a state's "adoption or progress toward adoption" of these leading practices. These grants are only available to state programs.

Many of these "leading practices" are consistent with California law or practice, or are under consideration by the Board or the 811 notification centers.

State Damage Prevention Grants (49 USC § 60134)

Section 60134 governs the distribution of the State Damage Prevention Grant. Current federal law requires PHMSA to consider, in making grants, "the commitment of each State to ensuring the effectiveness of its damage prevention program." The bill creates elements identifying that an effective program has at minimum:

- "effective, active, and consistent enforcement" of a state's safe excavation laws,
- Incident reporting requirements to the 811 notification center which include:
 - (i) information about the nature of the incident, including the facility damaged and the apparent cause of such damage (with supporting documentation)*
 - (ii) the organizations or entities involved;*
 - (iii) the impact to public safety, utility operations, and customer service; and*
 - (iv) the impact to the environment;*
- Data reporting requirements to the Common Ground Alliance
- Performance measures to assess the effectiveness of damage prevention efforts

These grants are available to both state programs and 811 notification centers, and in previous years DigAlert and USA North have applied for and received these grants. One such grant supported DigAlert's efforts to develop a reporting portal for damage notifications and complaints that go to the Board.⁶

Effects of Changes to Federal Statute Regarding Dig Safe Grants

Grants are a tool used by Congress and the federal government to encourage states to improve their pipeline safety programs, and grants to states for implementation of federal pipeline safety regulations. States can receive federal reimbursement for up to 80% of their pipeline safety program expenses.⁷ That reimbursement does not generally cover Dig Safe Law program activities, which are covered by the much smaller grants under Sections 6106 (up to \$60,000) and 60134 (up to \$100,000). While the monetary leverage of the proposed changes in the bill are small, statements of what constitutes "effectiveness," "leading practices," etc. can nonetheless create policy direction that PHMSA, Common Ground Alliance, and others consider in their activities.

Should this bill pass Congress and become law, the Board may wish to consider adding the "leading practices" (proposed § 6106 (b)) and factors to consider in making grants (proposed §

⁶ [List of State Damage Prevention Grant awards, 2018-2023.](#)

⁷ [49 USC § 60107.](#)

60134 (c)) to its Legislative Framework.

On February 21, 2024, PHMSA posted funding opportunities for both the One Call (§ 6106) and State Damage Prevention (§ 60134) grants.⁸

RECOMMENDATION

Staff has no recommendations at this time. Should changes to federal pipeline safety laws be made in 2024, the Board may wish to review them at its first meeting in 2025.

⁸ [FY 2024 Pipeline State One Call Grant](#) and [FY 2024 Pipeline Safety State Damage Prevention Grants](#) application periods both close on April 10, 2024.