

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENERGY AND AIR QUALITY**

**TESTIMONY OF THE HONORABLE DONALD L. MASON
COMMISSIONER, PUBLIC UTILITIES COMMISSION OF OHIO
ON BEHALF OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

ON

**“Discussion Draft on the Pipeline Safety Improvement Act Reauthorization and
H.R. 5782”**

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**National Association of
Regulatory Utility Commissioners
1101 Vermont Ave, N.W., Suite 200
Washington, D.C. 20005
Telephone (202) 898-2200, Facsimile (202) 898-2213
Internet Home Page <http://www.naruc.org>**

Summary of Remarks by
The Honorable Donald L. Mason
National Association of Regulatory Utility Commissioners
Before the
U.S. House of Representatives
Energy and Commerce Committee, Subcommittee on Energy and Air Quality

- Grant funding must increase to meet resource requirements of State pipeline safety programs. States strongly support the provisions found in both the Discussion Draft and HR 5782 that would provide up to 80% funding for State pipeline safety programs.
- The language amending Section 60105(b)(4) as proposed in both the Discussion Draft and HR 5782 will encourage the States to establish effective damage prevention programs without creating a certification criteria that a State may not be able to meet due to reasons outside the control of the State's pipeline safety agency. We believe that the language contained in the Discussion Draft is more beneficial to the State programs.
- States should be able to access damage prevention program grants to begin, maintain and/or improve their damage prevention programs.
- States should be able to use grants for litigation. States are mandated in both the Discussion Draft and HR 5782 to use civil penalties, if necessary, therefore litigation could be necessary as well.

Good Morning Mr. Chairman, Ranking Member Boucher and Members of the Subcommittee.

I am Donald L. Mason, a commissioner at the Public Utilities Commission of Ohio (PUCO). I have served in that capacity since 1998. I also serve as the Chair of the Committee on Gas for the National Association of Regulatory Utility Commissioners (NARUC). As Chairman of the NARUC Committee on Gas, I am testifying today on behalf of that organization and the National Association of Pipeline Safety Representatives (NAPSR). In addition, my testimony reflects my own views and those of the PUCO. On behalf of NARUC, NAPSR and the PUCO, I very much appreciate the opportunity to appear before you this morning.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Its membership includes the State public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. NARUC's members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to ensure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory. NAPSR is a non-profit organization of State pipeline safety directors, managers, inspectors and technical personnel who serve to support, encourage, develop and enhance pipeline safety.

We greatly appreciate your efforts, Mr. Chairman, as well as the members and staff of the Subcommittee on Energy and Air Quality, to make this legislation helpful and useful to the State agencies that are charged with ensuring the public safety with regard to pipelines. Additionally, we greatly appreciate the efforts of your colleagues and staff on the Transportation and Infrastructure Committee for their assistance to the States. Today, I would like to bring your attention to four issues found in both the Discussion Draft and HR 5782.

1. Funding

States strongly support the provisions found in both the Discussion Draft and HR 5782 that would provide up to 80% funding for State pipeline safety programs. The rapid expansion of federal pipeline safety initiatives in recent years (such as operator qualification, public awareness, integrity management, homeland security) has greatly increased the cost and resource demands of State participation. However, the grants authorized to be appropriated under both the Discussion Draft and HR 5782 are not adequate to move the States anywhere close to the 80 percent, even by 2010 or 2012. As an example, if the States' pipeline safety costs remain the same as the amount projected for 2006, even the 2010 authorization for pipeline safety (\$25,855,000 - \$2,000,000) is only 54.8% of the cost of the State pipeline safety programs.

State pipeline safety program funding is heavily dependent upon Pipeline Hazardous Material Safety Administration (PHMSA) proper sharing of these user fees. State

pipeline safety programs represent approximately 80 percent of the federal/State inspector work force that oversees pipelines nationwide. Without adequate funding, States will not be able to conduct the required inspections of the existing pipeline facilities or new pipeline construction projects, and encourage compliance with new and existing safety regulations. Grant funds are an effective way to leverage resources and increase total inspection capability since States match or exceed federal funding provided for pipeline safety.

2. Certification

The language amending Section 60105(b)(4) as proposed in both the Discussion Draft and HR 5782 will encourage the States to establish effective damage prevention programs without creating a certification criteria that a State may not be able to meet due to reasons outside the control of the State's pipeline safety agency. The States agree that this is necessary language to include in this legislation and we support the provisions found in both the Discussion Draft and HR 5782, however we believe that the language contained in the Discussion Draft is more beneficial to the State programs.

3. State Damage Prevention Programs

It is our understanding that the intent of subsections (a)(2), (c), and (e) of Section 60134 of HR 5782, taken together, gives the Secretary the discretion to make damage prevention program grants to States not only to support an existing damage prevention

program but also to provide an incentive to improve a program that currently may not be able to meet all elements outlined in the legislation; however, with additional assistance can attain and maintain an effective program as contemplated in the bill. Additionally, it is our understanding that the intent of subsection (c) of Section 60134 of the Discussion Draft is to provide the Secretary with the same discretion found in HR 5782 and outlined above.

Provided our interpretation of the language found in the referenced sections and subsections is correct, we believe that both bills are moving in the right direction. However, we also believe that both bills, with regard to the damage prevention program grants, contain a large degree of ambiguity and therefore leave much up to the interpretation of these subsections.

If the intent is indeed to enable the States to receive damage prevention program grants so that their programs can meet and exceed all the Damage Prevention Program Elements, we would suggest that language be added to both measures that clearly state that the States shall receive damage prevention program grants for the purpose of meeting, maintaining, or exceeding any or all the Damage Prevention Program Elements, thereby encouraging the States to work to establish the effective damage prevention programs envisioned by the Discussion Draft and HR 5782.

We bring this issue to your attention because it is our opinion that under the Discussion Draft language and HR 5782 an argument can be made that a State must be found to have

an effective program in order to be awarded a grant. Therefore, a State that has implemented some, but not all, of the effective program elements may not be eligible to obtain grant support for action it is currently taking, or for improving its existing program. If the intent of this legislation is to encourage States to adopt effective damage prevention programs, it seems counterproductive for States that have progressed in that area, or that could make progress if funds were available, to be ineligible for any funding at all.

4. Damage Prevention Grants to States

Our last concern is contained in both the Discussion Draft and HR 5782. Subsection 60134(c)(2) APPLICATION of the Discussion Draft and subsection 60134(g) NONAPPLICABILITY OF LIMITATION of HR 5782 both stipulate that damage prevention grant funds cannot be used for lobbying or in direct support of litigation. The Lobbying prohibition is understandable; however, “litigation” could include State enforcement actions or State defense of actions taken under its damage prevention program. Additionally, under the Damage Prevention Program Elements in element seven of both pieces of legislation, the language makes reference to the fact that in order for a State to have a “effective” program, the program must include “...the use of civil penalties....” If the State authority is mandated under federal law to enforce states’ damage prevention laws which could include civil penalties, it must be contemplated that these penalties may be appealed and that the State would need to litigate. We therefore

respectfully suggest that “in direct support of litigation” be deleted, or the intent of this language clarified.

Mr. Chairman, that concludes my remarks and I am available to answer any questions that you or the Subcommittee members may have. Thank you again for that opportunity to appear before you today.