

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2015 REGULAR SESSION
Unofficial Document

Amend printed copy of HB 272

Delete Sections 1 through 14 in their entirety and insert in lieu thereof the following:

"➔SECTION 1. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS
CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act:

- (1) "Cabinet" means the Energy and Environment Cabinet;
- (2) "Commission" means the Kentucky Public Service Commission;
- (3) "Department" means the Kentucky Department for Environmental Protection;
- (4) "Hazardous liquids" means petroleum and petroleum products;
- (5) "Kentucky pipeline safety fund" or "fund" means the fund created in Section 2 of this Act;
- (6) "Person" means any natural person, partnership, association, company or corporation, joint stock company, firm, company or business organization;
- (7) "Petroleum" means crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas;
- (8) "Petroleum product" means flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks, and other miscellaneous hydrocarbon compounds;

Amendment No. HFA 1

Sponsor: David Floyd

Committee Amendment: _____

Signed: _____

Floor Amendment: _____

LRC Drafter: Shera, Kristopher

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXXXX

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- (9) "Pipeline operator" means any person that owns or operates any pipeline facility that carries hazardous liquids or natural gas. "Pipeline operator" shall not include any utility as defined in KRS 278.010(3) or any municipally owned utility organized under KRS Chapter 96;
- (10) "Pipeline facility" means any intrastate pipeline structure, or any section of any interstate pipeline structure, of any kind and its related appurtenances located within the boundaries of this state that is used or capable of being used for pumping, handling, transferring, transporting, processing, refining, or storing of hazardous liquids or natural gas under pressure; and
- (11) "Pipeline safety assessment" means the pipeline safety assessment levied under Section 9 of this Act.

➔SECTION 2. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) The Kentucky pipeline safety fund is hereby created as a separate revolving fund in the State Treasury. The fund shall consist of amounts received from the pipeline safety assessment imposed under Section 9 of this Act, and any other proceeds from grants, contributions, appropriations, reimbursements, or other moneys made available for the purposes of the fund.
- (2) The Kentucky pipeline safety fund shall be administered by the cabinet.
- (3) Amounts deposited in the fund shall be distributed as provided in Section 3 of this Act.
- (4) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal year and shall not lapse but shall be carried forward into the next fiscal year.
- (5) Any interest earnings of the fund shall become a part of the fund and shall not lapse.
- (6) Moneys deposited in the fund are hereby appropriated for the purposes set forth in Section 3 of this Act.

➔SECTION 3. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) The moneys in the Kentucky pipeline safety fund shall be apportioned among the approved uses of the fund as specified in this section. The cabinet shall make disbursements from the fund upon such terms and conditions necessary in the view of the amount of revenues on deposit at the time each request for disbursement is reviewed and approved.
- (2) Not more than four percent (4%) of the total pipeline safety assessment collections deposited into the fund shall be disbursed or reserved for disbursement by the cabinet to pay the administrative costs and expenses incurred in the operation of the fund.
- (3) Following the disbursement specified in subsection (2) of this section, the remaining funds shall be disbursed for the following uses:

 - (a) Ten percent (10%) shall be disbursed to the Public Service Commission for the establishment of a hazardous liquids and natural gas pipeline safety program administered by the commission and to assist with the costs associated with the applications for certifications specified in Section 7 of this Act;
 - (b) Forty-five percent (45%) shall be used by the cabinet for the establishment of a grant program to assist local governments within whose jurisdiction a pipeline facility is located with the following costs:

 1. Training costs, which may include training curriculum for local first responders, trainers, trainee overtime salaries, and tuition costs for pipeline spill and discharge curriculum;
 2. Costs associated with the materials and equipment needed to respond to a pipeline spill, discharge, failure, or subsequent fire; and
 3. Costs associated with the establishment and implementation of a local

pipeline disaster preparedness plan or those portions of a hazard mitigation plan relating to pipeline hazards; and

(c) Forty-five percent (45%) shall be disbursed to the department to fund the pipeline spill response plan program established under Section 4 of this Act.

(4) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.

➔SECTION 4. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) Pipeline operators shall submit a spill response plan to the department that provides spill protection equivalent to or greater than a facility response plan under 49 C.F.R. 194.101. A person who has contracted with a pipeline facility to provide containment and cleanup services may submit the spill response plan on behalf of the pipeline operator for any pipeline facility for which the person is contractually obligated to provide services.

(2) Spill response plans shall, at a minimum, contain the following:

(a) The number, training preparedness, and fitness of all dedicated personnel assigned to direct and implement the plan;

(b) Arrangements for the positioning of spill containment, cleanup equipment, and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly mitigate the spill;

(c) The amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment;

(d) An evacuation plan for residents in the potential spill area that takes into account the local population, terrain, and infrastructure;

(e) Plans for temporary replacement of water supplies, public transportation routes,

- and other public utilities for residents in potential spill areas where necessary; and
- (f) The construction, operation, and maintenance history of each pipeline owned by the pipeline operator, including any conversion history for any repurposed pipeline that was converted according to 49 CFR 192.14 and 49 CFR 195.5.
- (3) (a) Spill response plans for pipeline operators shall be submitted to the department on or before January, 1 2016.
- (b) Any pipeline operator wishing to transport hazardous liquids or natural gas in or through Kentucky for the first time shall file a spill response plan with the department and obtain approval prior to transporting hazardous liquids or natural gas in or through Kentucky.
- (c) The department shall evaluate whether each plan submitted pursuant to 3(a) or (b) is complete. If the plan is determined to not be complete the department shall notify the pipeline operator within five (5) business days.
- (d) Any pipeline operator that receives notice that a spill response plan has been deemed to be incomplete by the department shall have ten (10) additional days to revise and resubmit their spill response plan to the department.
- (e) Any pipeline operator who submits a spill response plan pursuant to paragraph (b) of this subsection shall be required to resubmit their spill response plan on January 1 following the year in which they began transporting hazardous liquids or natural gas. Once approved, the spill response plan shall be valid for five (5) years.
- (4) (a) Once a spill response plan has been deemed to be complete the department shall make the spill response plan available to the public by posting a digital copy on a department Web site and by notifying the legislative body of each city, county, urban-county government, consolidated local government, unified local

- government, and charter county government through which a pipeline passes of a submitted spill response plan.
- (b) The department shall accept public comments on each spill response plan for at least forty five (45) days.
- (5) (a) The department shall approve or disapprove submitted spill response plans no later than March 1 of the year in which they were received.
- (b) Upon approval of a spill response plan for a pipeline operator, the department shall provide to the person submitting the plan a statement indicating that the spill response plan has been approved, the pipeline facilities covered by the plan, and any other information the department determines should be included.
- (c) If a spill response plan is disapproved, the pipeline operator shall receive notice and explanation of deficiencies from the department no later than March 1 of the year in which the spill response plan was received. Pipeline operators shall make necessary changes and resubmit a spill response plan within thirty (30) days of notification from the department of disapproval.
- (d) Upon disapproval of a spill response plan, a pipeline operator may request a hearing with the cabinet in accordance with KRS 224.10-440 to protest the disapproval of the spill response plan.
- (6) Approved spill response plans are valid for five (5) years. Prior to expiration of an approved spill response plan, pipeline operators shall review and, if necessary, update a spill response plan to be resubmitted to the department for approval.
- (7) The commission shall approve a spill response plan for a pipeline operator only if it determines that the plan meets the requirements set forth in this section and administrative regulations that may be promulgated by the department.
- (8) A pipeline operator shall notify the department in writing within five (5) days of any

significant change of which it is aware affecting its spill response plan, including changes in any factor set forth in this section or in administrative regulations of the department. The department may require the pipeline operator to update a spill response plan as a result of the changes.

(9) Approval of a spill response plan by the department shall not constitute:

(a) An express assurance regarding the adequacy of the plan; or

(b) A defense to liability imposed under any Kentucky law.

(10) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of this section.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

As used in Sections 5 to 7 of this Act:

(1) "Active pipeline" has the same meaning as in Section 8 of this Act;

(2) "Assessment period" has the same meaning as in Section 8 of this Act;

(3) "Commission" means the Public Service Commission established in this chapter;

(4) "Department" means the Department of Revenue;

(5) "Hazardous liquids" has the same meaning as in Section 1 of this Act;

(6) "Kentucky pipeline safety fund" means the fund established by Section 2 of this Act; and

(7) "Pipeline operator" has the same meaning as in Section 1 of this Act.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) To facilitate the collection of the pipeline safety assessment imposed by Section 9 of this Act, the commission shall require each pipeline operator to report annually on or before January 31 following the assessment period, the total miles of active pipeline owned or operated by the pipeline operator in Kentucky. The report shall be filed in the form and

format required by the commission, and shall include all information required by the commission.

- (2) (a) As soon as practicable after each report is received, the commission shall examine it. If, based on information available, the commission determines, that the miles of active pipeline owned or operated by the pipeline operator differ from the miles of active pipeline reported by the pipeline operator, the commission shall make a proposed adjustment to the report and shall notify the pipeline operator in writing of the proposed adjustment, including the basis for its determination.
- (b) Any adjustment shall be made within one (1) year of the date the report was received.
- (c) Any adjustment made by the commission shall be final unless the pipeline operator requests a hearing within twenty (20) days from the date of the notice required in paragraph (a) of this subsection. Any request for a hearing shall be in writing and shall be accompanied by a supporting statement setting forth the grounds for the hearing. The commission shall conduct the hearing as provided in that chapter and all appeal rights included in KRS chapter shall apply.
- (d) Pending the final resolution of any appeal, the commission shall include in the report submitted to the department under subsection (3) of this section the lower of the active pipeline miles reported by the pipeline operator or the active pipeline miles determined by the commission. Any adjustment from the reported amount upon final conclusion of any appeal shall be made on the next report following conclusion of the appeal.
- (3) The commission shall on or before March 31 of each year, submit to the department a report listing the total miles of active pipeline for each pipeline operator in Kentucky, along with the name and address of each pipeline operator in Kentucky. Any

adjustments included from prior periods shall be separately identified in the report.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) As part of the hazardous liquids and natural gas pipeline safety program specified in Section 3 of this Act, the commission shall seek those certifications as specified in 49 U.S.C. sec. 60105 with the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety, that will allow the commission to:

(a) Regulate intrastate hazardous liquids pipelines; and

(b) Participate in monitoring and inspections as an interstate agent on behalf of the Pipeline and Hazardous Materials Safety Administration with respect to interstate natural gas pipelines and interstate hazardous liquids pipelines.

(2) The commission shall seek all federal reimbursements available for the costs associated with its participation in monitoring and inspections under subsection (1)(b) of this section.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

As used in Sections 8 to 14 of this Act:

(1) "Active pipeline" means a pipeline located in Kentucky through which any amount of hazardous liquids or natural gas has been transported during an assessment period;

(2) "Assessment period" means the calendar year beginning on January 1 and ending on December 31;

(3) "Cabinet" means the Energy and Environment Cabinet established in KRS Chapter 224;

(4) "Commission" means the Public Service Commission established in KRS Chapter 278;

(5) "Department" means the Department of Revenue;

- (6) "Hazardous liquids" has the same meaning as in Section 1 of this Act;
- (7) "Kentucky pipeline safety fund" means the fund established by Section 2 of this Act; and
- (8) "Pipeline operator" has the same meaning as in Section 1 of this Act.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

- (1) Beginning July 1, 2016, and ending July 1, 2022, an annual pipeline safety assessment is hereby imposed at a rate of one hundred twenty dollars (\$120) per mile of active pipeline against all pipeline operators transporting hazardous liquids or natural gas through pipelines in Kentucky.
- (2) The department shall determine the assessment due from each pipeline operator using the information submitted to the department by the commission under subsection (3) of Section 6 of this Act, and shall send an assessment notice to each pipeline operator on or before May 31 of each year.
- (3) The assessment shall be paid to the department by the pipeline operator on or before July 1 of each year. Payment shall be made in the form and format required by the department, and shall be accompanied by any reports or documentation required by the department.
- (4) The department may retain one percent (1%) of the assessment collected to offset the cost of collecting and administering the assessment, and shall deposit all remaining amounts received from the assessment, along with any penalty, fee, and interest received to the Kentucky pipeline safety fund.
- (5) The department may, upon written request received on or prior to the due date of the assessment, for good cause satisfactory to the department, extend the time for paying the assessment for a period not to exceed thirty (30) days.
- (6) Any person for which the extension is granted shall pay, in addition to the assessment,

interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the assessment would otherwise have been due.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

The department shall administer Sections 8 to 14 of this Act and shall have all of the powers, rights, duties, and authority with respect to the assessment, collection, refunding, and administration of the assessment conferred generally upon the department by the Kentucky Revised Statutes, including KRS Chapters 131, 134, and 135.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

- (1) Any assessment not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the due date until the date of payment.
- (2) Any person who violates any provisions of Sections 8 to 14 of this Act shall be subject to all applicable penalties and fees imposed under KRS 131.180, 131.440, and 131.990.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

- (1) Notwithstanding any other provision of Sections 8 to 14 of this Act, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to Sections 8 to 14 of this Act shall be personally and individually liable jointly and severally, for the assessment imposed under Section 9 of this Act. Neither the corporate dissolution or withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the liability imposed by this section. The personal and individual liability shall apply to each and every person holding a corporate office at the time the assessments become or became due.

(2) No person will be personally and individually liable pursuant to this section if that person did not have authority in the management of the business or financial affairs of the corporation at the time the assessment imposed under Section 9 of this Act were due.

(3) As used in this section, "assessment" includes interest accrued at the rate provided by KRS 131.010(6) and all applicable penalties and fees imposed under KRS 131.180, 131.440, and 131.990.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) Whenever it is deemed necessary to ensure compliance with Sections 8 to 14 of this Act, the department may require any person subject to the assessment imposed under Section 9 of this Act to place security with it. The amount of the security shall be fixed by the department but shall not be greater than three (3) times the estimated average liability of pipeline operators who are responsible for payment of the assessment imposed under Section 9 of this Act. This limitation shall apply regardless of the type of security placed with the department.

(2) The amount of the security may be increased or decreased by the department, subject to the limitations provided in subsection (1) of this section.

(3) (a) If necessary, the department may sell the security at public auction to recover any tax, penalty, or interest due. However, security in the form of a bearer bond issued by the United States or any state or local governmental unit which has a prevailing market price may be sold by the department at a private sale at a price not lower than the prevailing market price.

(b) 1. As used in this paragraph, "delivery" means mailing the notice to the person it is addressed to, leaving the notice at his place of business with the person in charge of the place of business, or, if there is no one in charge, leaving the

- notice at a conspicuous place at the place of business. If the place of business is closed, or the person to be served has no place of business, leaving it at his home, with a person of suitable age and discretion residing in the home.
2. The department shall provide notice by certified mail, sent to the last known address as reflected in the records of the department, or by delivery, to the person who placed the security with the department of the date, time, and place of the sale.
3. Notice by certified mail shall be postmarked no later than ten (10) days prior to the sale. Notice by delivery shall be given no later than ten (10) days prior to the sale.
- (c) Any amount in excess of the amount due the department after the sale shall be returned to the person placing the security.
- (4) The Commonwealth may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of a pipeline operator's business until the security is obtained. The action may be brought in the Franklin Circuit Court.
- ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:
- (1) The commission shall cooperate with the department and shall provide to the department any information in its possession relevant to the administration of the assessment imposed under Section 9 of this Act upon request of the department.
- (2) The department may audit the books and records of any taxpayer regardless of the responsibility of the commission to regulate the taxpayer."