

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENERGY AND POWER**

**TESTIMONY OF THE HONORABLE NORMAN J. SAARI
COMMISSIONER, MICHIGAN PUBLIC SERVICE COMMISSION**

**ON BEHALF OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

ON

“Pipeline Safety Reauthorization Legislation”

March 1, 2016



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**Summary for Testimony of the Honorable Norman J. Saari
On Behalf of
The National Association of Regulatory Utility Commissioners**

- State Utility Commissions and State inspectors have direct safety authority over approximately 2.1 million miles of pipeline out of the approximately 2.5 million miles of pipeline in the nation, approximately 84% of the total.
- Current law says that the States may be reimbursed up to 80% by the federal government. During the 4 years prior to 2014, States averaged only 73% reimbursement but needed to request and receive waivers or “suspensions” to merely achieve the 73% reimbursement level. In 2014, the latest year money was reimbursed to the States; the base grant to the States was approximately \$42.2 million (for gas and hazardous liquids.) The States spent about \$56.4 million on their pipeline safety programs. This means that in 2014 the States as a whole were reimbursed approximately 74.8% of what they spent. In order to keep State programs where they currently are, we would respectfully request an authorization for appropriation and appropriation for FY 2016 of no less than \$49.5 million for State base grants, increasing by no less than 4% each fiscal year thereafter.
- NARUC strongly opposes Section 15 of the discussion draft.
- NARUC respectfully requests that the following provisions be added to the bill during the markup process:
 1. Eliminate outdated exemptions for gathering line regulation for rural areas and based on gathering lines of a particular diameter. States can and are willing to perform these additional inspections if associated incremental funding is provided.
 2. Odorization of natural gas in all pipelines.
 3. Require PHMSA to enter into an interstate agent agreement with any willing State that is capable of performing pipeline safety inspections on interstate facilities. Additionally, language should be included to prevent PHMSA from rescinding existing agreements without cause.
 4. Strike Maintenance of Effort section in current law.
 5. Include language to allow for recovery of all federally approved indirect costs claims by all State pipeline safety programs.
 6. Increase One-call grant for States to \$5 million from \$1 million.
 7. Permit the Secretary of Transportation to apportion up to 1% of travel appropriations to the States.

8. Provided eligibility for funding that originates for State pipeline safety programs to the National Association of Pipeline Safety Representatives (NAPSR).
 9. Permit State participation in One Call grants, even though their State may not have a specific provision of law addressing exemptions within the one-call State law, but has policies pertaining to the structure, development, and function of a well-organized One Call System that are equivalent elsewhere in State statute.
 10. The draft legislation should be amended to ensure that State pipeline safety regulatory authorities have the ability to request that PHMSA conduct a design safety review.
- NARUC's membership was and continues to be sincerely hopeful that our proactive engagement of providing specific legislative language to Congress and PHMSA would produce a reauthorization proposal that would truly lead to enhanced public safety. Unfortunately, without the changes discussed above, it is the opinion of the NARUC membership that this bill does little, if anything, to improve safety at the State and local level and therefore, although NARUC will not oppose the bill at this time, we cannot support this legislation as it is currently drafted. The opportunity to make effective enhancements to the nation's pipeline system should not be bypassed in the interest of expediency. Congress ought to use this instance to advance pipeline safety initiatives.

Good morning Chairman Whitfield, Ranking Member Rush, and Members of the House Committee on Energy and Commerce, Subcommittee on Energy and Power. My name is Norman Saari and I serve as a Commissioner on the Michigan Public Service Commission. Today, I am here to present testimony on behalf of the National Association of Regulatory Utility Commissioners (NARUC), however, where noted, I will also be offering positions reflective of the Michigan commission.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Our membership includes the 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. Our 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 assure 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.

Thank you for the opportunity to testify today regarding the pipeline safety reauthorization legislation discussion draft. My comments today will focus on aspects of the bill that are within the purview of State utility regulators. I applaud the Committee for holding today's hearing so that stakeholders may provide insights on the specifics of the draft proposals. For the nation's State economic utility regulators, ensuring safe, reliable, and affordable utility service is our highest priority. This has been our responsibility for the last 126 years. With the changes confronting the gas and electric sectors, this mission will only grow in importance in the future.

State regulators and State pipeline safety inspectors are the mainstay for pipeline safety. We do the bulk of the work and, for obvious reasons, have the most intimate knowledge of pipelines located in our respective jurisdictions. Currently, State Utility Commissions and State inspectors have direct safety authority over 2.1 million of the approximately 2.5 million miles of pipelines in the United States.

In the federal/State partnership (between the Pipeline and Hazardous Material Safety Administration (PHMSA) and the States), States retain responsibility for the safety of about 84% of the pipelines.

State safety inspectors are the “first line of defense” and the “boots on the ground” at the community level. We enforce pipeline safety, enact and enable underground utility damage prevention programs, and promote public education/public awareness campaigns regarding pipeline safety. The obvious focus of State pipeline safety programs is to ensure public safety. Our efforts are designed to increase public confidence that the pipeline system is the safest and most reliable in the world.

All States are required to certify to the Secretary of the U.S. Department of Transportation that their programs will adopt regulations that are at least as stringent as the Federal Pipeline Safety Regulations.

However, 45 States have gone beyond the federal minimum and adopted more stringent safety rules. Nationally, in 2012, **State** mandated safety requirements and initiatives that are more stringent than Federal Pipeline Safety Regulations numbered over 1,300. These are detailed in the “Compendium of State Pipeline Safety Requirements & Initiatives Providing Increased Public Safety Levels compared to Code of Federal Regulations.” This 344 page document is jointly produced by the National Association of Pipeline Safety Representatives

(NAPSR) and NARUC and can be found online at: www.napsr.org/compendium. The last update of this compendium was released in 2013. A new update is being compiled now.

Last July, NARUC's Committee on Gas Chair, Georgia Commissioner Stan Wise testified before this Subcommittee on pipeline safety.

In his testimony, he presented 10 modest, commonsense legislative proposals that will almost certainly enhance pipeline safety for natural gas and hazardous liquids transported throughout the United States. NARUC also provided those proposals to the other House and Senate Committees with jurisdiction over pipeline safety reauthorization legislation, as well as to our federal partner, PHMSA.

We are deeply troubled when the State agencies responsible for approximately 84% of the pipeline safety mission come to their elected Members of Congress with suggested changes to current law – changes that should improve overall safety on those systems we regulate – and those changes fall on deaf ears.

Unfortunately, the discussion draft does not contain any language presented for this Committee's consideration by Commissioner Wise in July. In fact, this draft does not even mention those issues, much less provide or contemplate compromise language that address the deficiencies in current law raised by Commissioner Wise's testimony.

One reason NARUC was pleased to be asked to testify, was to have the opportunity to again respectfully suggest the following changes be included in any pipeline safety reauthorization bill that is approved by the U.S House of Representatives.

NARUC Legislative Priorities

1. Authorization of Appropriations

Since this Subcommittee held its July hearing regarding pipeline safety, the Senate Committee on Commerce, Science and Transportation reported the “SAFE PIPES Act.” This Senate bill, unfortunately, added a crucial issue that, if unaddressed, can only undermine pipeline safety in the United States – funding for inspection programs. Current law says that the States may be reimbursed up to 80% by the federal government for pipeline safety programmatic costs.

In 2014, the last year money was reimbursed, the base grant was approximately \$42.2 million (for gas and hazardous liquids.) However, States spent about \$56.4 million on pipeline safety. This means that in 2014, States as a whole were reimbursed about 74.8% of what was actually expended on safety programs. .

Over the last 10 years, States’ pipeline safety program costs have increased an average of 4% more each year. The overwhelming majority of those increases are caused by expenses, like employee/inspector medical premium costs, over which there is little control.

The Senate bill ignores these facts.

Specifically, Section 2 of the Senate bill authorizes for FY 16 – the first year of the reauthorization – State grants of about \$42.5 million. From FY 16 through FY 19 – the last year of the reauthorization – the State grant increases only by 1% per year to finish at approximately \$43.8 million.

The looming deficit in funding safety efforts is even worse than it appears at first glance. During this period Florida, a State that has traditionally not participated in the PHMSA reimbursement grant program, has applied for approximately \$1.2 million per year. This has the effect of diluting the funds available to each State even further. Moreover, California has

recently announced that it is seeking to increase its hazardous liquid inspector workforce by 17 more inspectors even though the May 2015 Santa Barbara County oil pipeline rupture was a federal responsibility.

If funding is authorized and appropriated at the level proposed in the Senate bill, States could be looking at reimbursement percentages decreasing to the 60% range - effectively the same amounts available 6 years ago.

This can have only one impact. It will discourage the hiring of additional State inspectors. It will stress constrained budgets. It will require States to look for ways to stretch existing resources to oversee a rapidly growing and expanding infrastructure.

To at least keep existing State programs operating at current efficiency levels, it is vital for Congress to include an authorization for appropriation for FY 2016 of no less than \$49.5 million for State base grants. Moreover, the authorization should provide that the base increases by no less than 4% each fiscal year.

If Congress includes NARUC proposed and long over-due expansion of inspections to include gathering lines, the appropriation would necessarily have to be increased by approximately \$11 million each fiscal year to cover the additional required oversight.

Curiously, given the national interest in pipeline safety, in comparison, the Senate has proposed funding PHMSA quite a bit better than States. PHMSA's authorization from 2015 will increase by about \$25.4 million. PHMSA's per year increase from 2016 to 2019 is twice what was proposed for the States - approximately 2% per year.

It seems obvious, given the relative responsibilities, that constituents in each of your States will be better served by shifting the Senate's proposed \$25.4 million increase in PHMSA's authorization (and the associated yearly increases) over to support the base grants that maintain

crucial State safety programs. States fund these programs in advance and their projections are based on the expectation that Congress will continue to provide reimbursements at equitable levels that keep up with easily anticipated program costs.

We understand, Mr. Chairman, that this is not the Committee on Appropriations. However, we respectfully request that you and your colleagues consider these crucial State expenditures as you work on the text of your bill and most importantly on the final appropriated funding levels for States.

2. Gathering Line Regulation

Currently, the legislation does not address the regulation of gas associated with Class 1 gathering lines. Class 1 gathering line regulation should be included in any reauthorization legislation.

Class 1 Gathering Pipelines are the only pipeline designation not addressed in the current Act. There is no sound basis for having certain Gathering Lines exempted and thus non-jurisdictional to both federal and State governments for safety oversight. New gathering lines can operate at pressures up to 2000 psig and pipe size as large as 40+ inch diameter, which are on a par with those that are built for transmission pipelines. Still, under current law, new gathering lines at many locations are not required to be part of an underground damage prevention system, do not require odorization, do not have to meet welding or pressure test standards, and do not have to be installed at specific depths. Moreover, the owners also do not have to perform leak surveys or even have to report locations of the lines to PHMSA or State authorities. This means gathering line incident data is almost non-existent because there are limited reporting requirements.

Incidents that are not reportable obviously do not require any investigation.

Gathering lines are increasingly interfering with existing transmission systems and can interfere with the Corrosion Protection Systems and Public Awareness Plans of transmission operators. Recently, in Sissonville, West Virginia, NTSB investigated an incident regarding a 4” diameter gathering line. The local fire chief was bewildered because he had no idea that any gathering line was located there.

Today gathering lines are more numerous and in some cases larger than those installed years ago. They require oversight. Your constituents deserve the same pipeline safety oversight regardless of whether they reside in rural areas, suburban, or urban areas. Safety oversight should not depend on whether a particular pipeline is characterized as gathering or distribution.

3. Transportation of Un-odorized Gas in Gathering and Transmission Lines

The legislation that is reported should include a provision to require the odorization of natural gas in all pipelines. The existing Act only requires natural gas odorization to those gathering lines and transmission pipelines that are currently jurisdictional (excludes Class 1 and rural gathering).

Gas odorization is the basic foundation for natural gas safety. All pipelines, no matter the location, should be odorized to alert and warn the public in the event of a failure. Currently, a federal requirement does not exist requiring the odorization of natural gas in Class 1 locations and certain areas of Class 2 and Class 3 locations for transmission pipelines.

An odorant exclusion in the Act is an unacceptable risk to the safety of the general public. NARUC and NAPSAR stand fast that odorization of all pipelines is a safety requirement that should not be compromised. Time and time again we hear the many stories that it is the odor of the gas that is the trigger for first detecting that a gas pipeline is either leaking or has

ruptured. It is this same odorant that allows for necessary time to evacuate and find the failed pipeline so that proper and timely investigations and repairs can be performed.

To help better understand how the PHMSA odorization rule works in 49 CFR 192.625, NEXUS Gas Transmission, and L.L.C. is constructing a 255 mile 36 inch diameter 1.5 billion cubic foot of gas transmission line in mostly class 1 locations. Under the current regulation, only the last 7.3 miles would require odorization and NEXUS is requesting a Special Permit from PHMSA so they do not have to odorize this section. This can be read more thoroughly in docket # PHMSA-2016-0009 at <http://www.regulations.gov>.

4. Interstate Agent Agreements New and Existing

Language should be added to the bill to require PHMSA to enter into an interstate agent agreement with any willing State that is capable of performing pipeline safety inspections on interstate facilities. Additionally, language should be included to prevent PHMSA from rescinding existing agreements without cause.

There can be no justification for reducing the number of State cops on the beat.

The only impact can be a reduction in the level of oversight.

Currently, States are permitted to enter into an agreement with PHMSA to inspect interstate pipeline facilities located within the State's borders. PHMSA in December 2014 announced that it intended to rescind existing State interstate agent agreements and not allow additional States to become interstate agents.

Currently, New Hampshire has State law that requires requesting interstate agent status every year but has been denied by PHMSA.

The Kentucky Legislature has a legislative proposal that requires interstate agent status.

Maryland has requested interstate agent status but was denied by PHMSA.

In Michigan, there are proposals for Michigan to become interstate agents.

Pennsylvania has several bills in its legislature that would require a Pennsylvania State program to perform inspections on interstate natural gas pipelines and hazardous liquid pipelines either as interstate agents or as a State inspection.

PHMSA has intentions of hiring more federal inspectors for this purpose.

However, from a budgetary perspective, this makes little sense.

States can perform the same pipeline inspection duties as PHMSA at a reduced cost, due in part to the State salaries and fringe benefits being less than those of the federal government. Utilizing States who want to perform the interstate inspection function would minimize the need for increasing the number of federal inspectors, and the associated travel expenses, resulting in lower costs to the pipeline safety program.

Moreover, State inspectors are more likely to be familiar with the pipelines and their operators as they inspect other pipelines in the same rights of way, thus providing equal or greater inspection capabilities.

5. Maintenance of Efforts Clause

The maintenance of effort section in current law should be stricken. PHMSA issues pipeline safety base grants to the States as a result of a certification agreement with the U.S. Department of Transportation, (USDOT) – PHMSA. These base grants are defined as reimbursement grants. By default under a reimbursement grant, States have to pay in advance the costs associated with State pipeline safety programs and then subsequently request reimbursement from PHMSA.

Logically, since the States fund their pipeline safety programs for more than 12 months without reimbursement, the States have already met any realistic the “maintenance of effort”

threshold. States that have such programs are necessarily already committed to a “maintenance of effort (MOE)” standard. Currently, the Act requires, as part of a MOE, the States to spend an average of their three prior fiscal years’ for their pipeline safety program costs. Requiring States to spend at an average of three prior fiscal years has caused almost all States to be unable to meet the maintenance of effort standard in the Act. This in turn, required PHMSA to invent the Suspension Funding mechanism to facilitate funding and avoid undermining crucial State programs. The States are thankful to PHMSA for creating a mechanism to transfer State funds back to the States; however, this action is an unnecessary bureaucratic tangle. It doesn’t make sense for a law to set up a system by which it is agreed that the States should be reimbursed for providing a service that the federal government knows it cannot do on its own, and then under that same law make it impossible for the States to be reimbursed for the work, unless a waiver is granted.

If the MOE language from the current Act is kept in place, PHMSA will have to continue the use of the Suspension Funding mechanism and approve additional MOE waivers (PHMSA calls this waiver a “suspension of the MOE”). PHMSA will also need to request that the USDOT Secretary grant these waivers and the Secretary will have to continue to approve said waivers. This process is not just inefficient – it highlights the flawed mechanism in the current law. When language exists that requires States to annually apply for waivers then that fundamental language needs to be corrected. If a State does not incur costs based on an average of three prior fiscal years as required for the MOE, then PHMSA has declared that the State would not be able to attain any grant money for the year and would lose grant eligibility. Should this occur, who will continue to provide for the safety of the pipeline system in that State?

6. Indirect Cost Limitation Elimination

NARUC is requesting that language be added to the bill to allow for recovery of all federally approved indirect costs claims by all State pipeline safety programs.

The original Pipeline Safety Act had a limitation of 20% on indirect cost reimbursement; but that limitation was recognized as impractical and was removed from statute (§60125). Further, the current Act does not distinguish between direct and indirect costs.

However, PHMSA continues to limit State reimbursements to 20% of the indirect costs even though some States have a federally approved Indirect Cost plan that is at a higher level than 20%. For Calendar year 2015, PHMSA for the first time is willing to pay the actual negotiated indirect cost rates to those with greater than 20% of direct cost. States should have protections in the law to prevent these arbitrary reimbursement practices. Fortunately, States do have the option of taking a 10 percent indirect cost rate without having to go through the negotiated rate process. In each State the indirect costs are different because of the sizes and complexities of their programs. In some smaller States the Administrative Staff is small and shared by all sections within the agency and are thus considered an indirect cost, whereas in larger State programs, the Pipeline Safety Section has its own administrative personnel who may be classified as a direct cost to the program.

7. Increasing One-Call Grant Amounts

Language should be added to the bill that increases the one-call grant from \$1 million to \$5 million. The One Call grant is vital to ensuring safe operations of underground facilities. The number one safety issue for all States' pipeline safety programs is damage to underground pipeline facilities. PHMSA statistics, year after year, point out that excavation damage is the leading cause of incidents. The simplest and quickest way to reduce incidents nationally is to

inject an increased amount of funding targeted to States that will lead to greater enforcement. The amount of this grant awarded to States has not changed since 1993. In the past, many States utilized the One Call grant to recover costs associated with enforcement activities, but the small amount of the grant precludes its usefulness for enforcement.

8. State Pipeline Safety Related Travel

Language should be added that would permit the Secretary of the Department of Transportation to apportion up to 1% of travel appropriations to the States. This proposed NARUC change to the current Act will provide economic savings to the State pipeline safety programs with regards to traveling to meetings, technical committee work, or training. Currently, PHMSA is permitted to grant funds to cover the expenses resulting from State Program Manager's travel to meetings associated with pipeline safety. However, these funds have been limited by PHMSA. NARUC's proposal would allow the State programs to recover more funds for State Program managers and key staff members who serve as subject matter experts on national standards organizations to recover the costs of the additional travel requirements. The proposal would also enable State programs to more fully engage in a mentoring program for inspectors and save travel costs to the State programs.

9. State Pipeline Safety Grants

NARUC proposes that language be included in the legislation so that the National Association of Pipeline Safety Representatives (NAPSR) will be eligible for funding that originates from State pipeline safety programs. The bill should include language that eliminates the limiting cap language that currently limits funding of the State programs at 80% and allows for 100% funding of this specific provision for NAPSR. Additionally, the language should include a provision to fund the NAPSR Administrative Manager position salary and benefits.

The administrative position is an integral part of the partnership between PHMSA and NAPS R to coordinate pipeline safety activities such as increased communications in the pipeline safety community, performing vital committee work, and allows program managers to participate as NAPS R Board of Director members. The Administrative Manager position is vital to NAPS R's mission and is currently funded through a PHMSA grant. The proposed language allows for the automatic funding of the position through the Pipeline Safety Act.

10. Exemption Requirement for One-Call Grant

NARUC proposes the bill be amended to allow for States to be eligible to participate in One Call grants, even though their State may not have a specific provision of law addressing the one-call program, but has equivalent policies pertaining to the structure, development, and function of a well-organized One Call System elsewhere in State statute. If a State's policy directs the One Call System's function, then the State should be eligible to participate in the grant process. Without this provision, States that have policies that mirror other States' laws would be prohibited from applying for One Call grants. Essentially, this proposed provision maintains the intent of current law by including States' policies toward One Call functionality.

11. Design Review Requirement when requested by State

The draft legislation should be amended to ensure that State pipeline safety regulatory authorities have the ability to request that PHMSA conduct a design safety review. A design safety review is an engineering analysis of the proposed construction project to ensure that the proposed project meets the requirements of the jurisdictional body. Under current statutory wording, there is no standard for when or how PHMSA must conduct such a review. This would enable State authorities to receive the design specifications, construction plans and procedures, and related materials prior to initiation of construction.

Additionally, section 15 of the discussion draft is extremely concerning. This provision would, in effect, give the federal judicial branch jurisdiction over our pipeline safety infrastructure. We do not understand how this jurisdictional shift enhances pipeline safety. Jurisdiction for the safety of the nation's pipeline system must stay with the State regulators and inspectors that do this job every day of the week and their federal partners. This provision would risk the federal-State partnership each time an incident happens. NARUC strongly opposes inclusion of this provision.

I would now like to spend a few moments to provide the Subcommittee with some information related specifically to the pipeline safety program in Michigan. Michigan's Gas Safety rules were originally adopted in 1957 and have been regularly updated to reflect changes in technology and federal regulation. The Michigan Public Service Commission adopted in December 2014 the 23rd edition of the state's gas safety regulations, ensuring best practices are in place and properly coordinated for intrastate pipelines and in compliance with PHMSA regulations for interstate facilities.

Michigan established the nation's first one-call system in 1970 to promote safety practices with property owners, underground facility owners and excavators while excavating. The MISS DIG system now logs in over three-quarters of a million calls annually to implement and locate and marking program prior to excavation activities.

The MPSC is working with major natural gas utilities in the state to address the age and structural integrity of gas distribution lines. The state regulates about 57,000 miles of underground natural gas distribution mains and 3.2 million services. The gas main replacement programs have been established using risk-based prioritization methods that consider material types, historical leaks and maintenance through the years among other physical attributes and

safety considerations. Utilities are working toward achieving replacement programs for these higher risk materials that will be completed in 25-30 years. To meet safety and efficiency requirements, the programs will be modified over the next few years to meet the replacement goals.

Michigan’s underground gas storage fields have the volumetric capacity to be the largest in the nation. The storage fields are primarily located in depleted gas reservoirs, and, to a lesser extent, former salt caverns. The fields can cumulatively store some 675 billion cubic feet of natural gas to augment daily pipeline supply to meet customer’s needs.

Type of Infrastructure		Companies Inspected
Natural Gas (MPSC Inspection based on 2014 year end)		
Number of Services	3,247,804	12
Estimated Miles of Services	53,940	
Miles of Gas Distribution	57,367	
Miles of Intrastate Gas Transmission Main	5,208	36
Miles of Interstate Gas Transmission Main	3,538	8
Miles of Regulated Gathering Lines	364	18

In conclusion, Mr. Chairman, NARUC’s membership was, and remains, truly hopeful that our proactive engagement of providing specific legislative language to Congress and PHMSA would lead to a reauthorization proposal that was worthy of having the term “safety” included in the title. Unfortunately, without the changes discussed above, it is the opinion of the

NARUC membership that this bill does little, if anything, to improve safety at the State and local level and therefore, although NARUC will not oppose the bill at this time, we cannot support this legislation as it is currently drafted.

NARUC and our members stand ready to work with you on this legislation. We believe our minimal, commonsense enhancements to the bill's language will increase pipeline safety across the nation. Thank you very much for your attention and I look forward to your questions.