

EXHIBIT 4
DATE 3.2.05
SB SB169

Memorandum

To: Representative Alan Olson, Chairman Federal Relations, Energy and
Telecommunications Committee

From: Greg Jergeson, Chairman, Public Service Commission



Date: March 3, 2005

Re: Basis for Senate Bill 169

Attached to this memorandum per your request is the explanation and attachments regarding the basis for Senate Bill 169.

Each year the Montana Public Service Commission submits to the United States Secretary of Transportation a certification under Section 60105 of Title 49 of the United States Code. As part of that certification, the Commission reports that it has adopted the amended sections of the Title 49 code to comply with the Federal code. This is Attachment 8 to the certification and is attached to this note, for the 2002, 2003 and 2004 reporting years.

In December of 2002 the United States Congress passed, and it was signed into law by the President, Public Law 107-355. This was entitled the Pipeline Safety Improvement Act of 2002. Section 8 of that law, which is also attached, amended the penalty portion of the law to raise the penalties from \$25,000 to \$100,000, and from \$500,000 to \$1,000,000.

The 2004 Certification submitted reflected the change to the penalties. The 2005 Session of the Montana Legislature was the first opportunity for the Commission to ask for an amendment to the state law to reflect the change.

than \$1,000 for each violation. The penalties provided by paragraph (1) do not apply to a violation of section 60129 or an order issued thereunder.”.

(c) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by adding at the end the following:

“60129. Protection of employees providing pipeline safety information.”.

SEC. 7. SAFETY ORDERS.

Section 60117 is amended by adding at the end the following:

“(1) SAFETY ORDERS.—If the Secretary decides that a pipeline facility has a potential safety-related condition, the Secretary may order the operator of the facility to take necessary corrective action, including physical inspection, testing, repair, replacement, or other appropriate action to remedy the safety-related condition.”.

SEC. 8. PENALTIES.

(a) PIPELINE FACILITIES HAZARDOUS TO LIFE, PROPERTY, OR THE ENVIRONMENT.—

(1) GENERAL AUTHORITY.—Section 60112(a) is amended to read as follows:

“(a) GENERAL AUTHORITY.—After notice and an opportunity for a hearing, the Secretary of Transportation may decide that a pipeline facility is hazardous if the Secretary decides that—

“(1) operation of the facility is or would be hazardous to life, property, or the environment; or

“(2) the facility is or would be constructed or operated, or a component of the facility is or would be constructed or operated, with equipment, material, or a technique that the Secretary decides is hazardous to life, property, or the environment.”.

(2) CORRECTIVE ACTION ORDERS.—Section 60112(d) is amended by striking “is hazardous” and inserting “is or would be hazardous”.

(b) ENFORCEMENT.—

(1) GENERAL PENALTIES.—Section 60122(a)(1) is amended—

(A) by striking “\$25,000” and inserting “\$100,000”; and
(B) by striking “\$500,000” and inserting “\$1,000,000”.

(2) PENALTY CONSIDERATIONS.—Section 60122(b) is amended by striking “under this section” and all that follows through paragraph (4) and inserting “under this section—

“(1) the Secretary shall consider—

“(A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment;

“(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue doing business; and

“(C) good faith in attempting to comply; and

“(2) the Secretary may consider—

“(A) the economic benefit gained from the violation without any reduction because of subsequent damages; and

“(B) other matters that justice requires.”.

(3) CIVIL ACTIONS.—Section 60120(a) is amended—

(A) by striking “(a) CIVIL ACTIONS.—(1)” and all that follows through “(2) At the request” and inserting the following:

“(a) CIVIL ACTIONS.—

and special reports on request.

¹Click on the Document Type link to edit each row. Click on the Add Document link to add a new document record.

Attachment 7 - Staff Training

STATE EMPLOYEES DIRECTLY INVOLVED IN THE NATURAL GAS PIPELINE SAFETY PROGRAM DURING CY 2002

Name/Title	% Time	# Months	Qual. Cat.	MM/YYYY Last Attended TSI Course								
				250	251	252	253	254	255	256	257	259
Supervisors												
Tierney, G. Joel; Program Manager, Pipeline Safety	27	12	I	07/1991	05/1992	04/1993	01/1996	03/1992	02/1992	02/1991	02/1994	
Inspectors												
Tierney, G. Joel; Program Manager, Pipeline Safety	13	12	I	07/1991	05/1992	04/1993	01/1996	03/1992	02/1992	02/1991	02/1994	
Vick, Steve; Manager, Utility Division	4	12	Ila					05/2002				
Clerical												
Waples, Debbie; Compliance Specialist	0	10										

¹Click on the Employee Name link to edit each row. Click on the Add Employee link to add a new employee record.

Summary		
Employee Type	No. of Staff	Person-Years
supervisor	1	0.27
inspector	2	0.17
clerical	1	0
Total	4	0.44

Attachment 8 - Compliance with Fed. Regs.

STATE COMPLIANCE WITH FEDERAL REQUIREMENTS AS OF DECEMBER 31, 2002

No.	Effective Date	Impact	Adoption Status	Adoption Date	Note ²
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1. Maximum Penalties Substantially Same as DOT (\$25,000/\$500,000); Indicate actual amount in note.	Adopted	10/1993	\$25,000/day upto \$500,000
2. 191.23 and 191.25 Safety-Related Conditions	Adopted	10/1990	
3. Part 192 Amendments			
01- Pre 1998 [All applicable amendments prior to and including 1998]	Adopted	12/1998	85
86 10/26/1999 Operator qualification	Adopted	12/1999	
87 11/22/1999 Determining extent of corrosion	Adopted	12/2000	
88 1/13/2000 Gas and hazardous liquid pipeline repair	Adopted	12/2000	
89 10/10/2000 Underwater abandoned pipeline facilities	Adopted	12/2000	
90 7/20/2001 Correction to Final Rule on Qualification of Pipeline Personnel	Adopted	12/2001	
91 9/5/2002 Definition of high consequence areas for gas transmission lines	Adopted	12/2002	
4. Part 193 Amendments (applicable only where state has jurisdiction over LNG)			
01- Pre 1998 [All applicable amendments prior to and including 1998]	Adopted	12/1998	14
15 5/4/1998 Incorporation by reference Vaporization design rate	Adopted	12/1998	
16 7/13/1998 Metric Equivalents	Adopted	12/1998	
17 3/31/2000 Incorporation of Standard NFPA 59A	Adopted	12/2000	
5. Part 199 - Drug Testing	Adopted	12/1997	
6. Part 199 Amendments			
01- Pre 1998 [All applicable amendments prior to and including 1998]	Adopted	12/1998	15
16 4/15/1998 Applicability requirements/employees are outside territory of the United States	Adopted	12/1998	
17 5/4/1998 Retention of samples & retesting	Adopted	12/1998	
18 4/16/1998 Definitions: Covered employee & function; Removed definition of employee; follow-up testing; drug testing results	Adopted	12/1998	
18A 7/8/1998 Correction to AMDT. 199-18	Adopted	12/1998	
19 9/11/2001 Conforming to drug and alcohol testing regulations	Adopted	12/2001	
7. State Adoption of Part 198 State One-Call Damage Prevention Program			
a. Mandatory coverage of areas having pipeline facilities	Adopted	10/1991	
b. Qualification for operation of one-call system	Adopted	10/1991	
c. Mandatory excavator notification of one-call center	Adopted	10/1991	
d. State determination whether calls to center are toll free	Adopted	10/1991	
e. Mandatory intrastate pipeline operator participation	Adopted	10/1991	
f. Mandatory operator response to notification	Adopted	10/1991	
g. Mandatory notification of excavators/public	Adopted	10/1991	
h. Civil penalties/injunctive relief substantially same as DOT (\$25@000/\$500@000)	Not Adopted		Would require legislative action.

¹Click on the Amendment link to enter data for each row.

²If Adoption Status is No, please use the note area to provide an explanation.

Attachment 8 - Compliance with Fed. Regs.

STATE COMPLIANCE WITH FEDERAL REQUIREMENTS AS OF DECEMBER 31, 2003

No.	Effective Date	Impact	Adoption Status	Adoption Date	Note ²
1. Maximum Penalties Substantially Same as DOT (\$100,000/\$1,000,000); Indicate actual amount in note.			Adopted but different Dollar amounts	10/1993	\$25,000/\$500,000 Will require legislative action in 2005 to change.
2. 191.23 and 191.25 Safety-Related Conditions			Adopted	10/1990	
3. Part 192 Amendments					
01-87	Pre 1999	[All applicable amendments prior to and including 1999]	Adopted	10/2000	
88	1/13/2000	Gas and hazardous liquid pipeline repair	Adopted	10/2000	
89	10/10/2000	Underwater abandoned pipeline facilities	Adopted	10/2000	
90	7/20/2001	Correction to Final Rule on Qualification of Pipeline Personnel	Adopted	10/2001	
91	9/5/2002	Definition of high consequence areas for gas transmission lines	Adopted	10/2002	
92	09/04/03	Procedures for Producer-operated outer continental shelf natural pipelines that cross directly into state waters	Adopted	10/2003	
93	10/15/03	various changes to gas pipeline safety standards from NAPSR recommendations	Adopted	10/2003	
4. Part 193 Amendments (applicable only where state has jurisdiction over LNG)					
01-16	Pre 1999	[All applicable amendments prior to and including 1999]	Adopted	10/1999	
17	3/31/2000	Incorporation of Standard NFPA 59A	Adopted	10/2000	
5. Part 199 - Drug Testing			Adopted	10/1997	
6. Part 199 Amendments					
01-18A	Pre 1999	[All applicable amendments prior to and including 1999]	Adopted	10/1998	
19	9/11/2001	Conforming to drug and alcohol testing regulations	Adopted	10/2001	
7. State Adoption of Part 198 State One-Call Damage Prevention Program					
a.	Mandatory coverage of areas having pipeline facilities		Adopted	10/1991	
b.	Qualification for operation of one-call system		Adopted	10/1991	
c.	Mandatory excavator notification of one-call center		Adopted	10/1991	

Attachment 8 - Compliance with Federal Regulations

STATE COMPLIANCE WITH FEDERAL REQUIREMENTS AS OF DECEMBER 31, 2004

No.	Effective Date	Impact	Adoption Date	Adoption Status
1 Maximum Penalties Substantially Same as DOT (\$100,000/\$1,000,000); Indicate actual amount in note.				
		Note²: Current civil penalties are \$25000/\$500000. The Commission currently has legislation before the 2005 Montana Legislature to adopt the maximum civil penalties of \$100000/\$1000000.	10/1993	Adopted but different Dollar amounts
2 191.23 and 191.25 Safety-Related Conditions				
			10/1990	Adopted
3 Part 192 Amendments				
01-89	Pre 2000	[All applicable amendments prior to and including 2000]	10/2000	Adopted
90	7/20/2001	Correction to Final Rule on Qualification of Pipeline Personnel	10/2001	Adopted
91	4/23/2004	Definition of high consequence areas for gas transmission lines	10/2004	Adopted
92	9/4/2003	Procedures for Producer-operated outer continental shelf natural pipelines that cross directly into state waters	10/2003	Adopted
93	10/15/2003	various changes to gas pipeline safety standards from NAPSR recommendations	10/2003	Adopted
94	7/14/2004	Correction from periodic update to pipeline safety regulation and subsequent corrections	10/2004	Adopted
95	5/26/2004	Pipeline integrity management for transmission lines in HCAs	10/2004	Adopted
96	9/14/2004	Pressure limiting and regulating stations	10/2004	Adopted
97	7/28/2004	Passage of internal inspection devices on new and retrofitted transmission pipelines	10/2004	Adopted
98	9/9/2004	Performance of periodic underwater inspections	10/2004	Adopted
4 Part 193 Amendments (applicable only where state has jurisdiction over LNG)				
01-17	Pre 2000	[All applicable amendments prior to and including 2000]	10/2000	Adopted
18	4/9/2004	Updated LNG standards by section	10/2004	Adopted
5 Part 199 - Drug Testing				
			10/1999	Adopted