

2017 Regular Session

HOUSE BILL NO. 389

BY REPRESENTATIVE CARMODY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

UTILITIES: Authorizes the commissioner of the office of conservation of the Louisiana Department of Natural Resources to regulate pipeline utilities and facilities

1 AN ACT

2 To amend and reenact R.S. 30:21(B)(2)(a) and 544(A)(1) and R.S. 40:1749.23(A) and to

3 enact R.S. 30:4(S) and R.S. 40:1749.12(17) and (18) and 1749.27, relative to the

4 Louisiana Underground Utilities and Facilities Damage Prevention Law; to provide

5 for the authority of the commissioner of conservation to enforce laws for the

6 prevention of damage to pipelines; to provide for and require certain procedures; to

7 provide for adjudication of violations; to provide for penalties and other remedies;

8 to provide for collection of monies; to provide for the authority of the commissioner

9 of conservation to levy fines and penalties; to provide for effectiveness; and to

10 provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 30:21(B)(2)(a) and 544(A)(1) are hereby amended and reenacted and
13 R.S. 30:4(S) is hereby enacted to read as follows:

14 §4. Jurisdiction, duties, and powers of the assistant secretary; rules and regulations

15 * * *

16 S. To enforce the provisions of Part VIII of Chapter 8 of Title 40, R.S.
17 40:1749.11 et seq., the Louisiana Underground Utilities and Facilities Damage
18 Prevention Law, as it pertains to the prevention of damage to pipelines.

19 * * *

1 §21. Fees and charges of the commissioner of conservation; revisions; exceptions;
2 collections; Oil and Gas Regulatory Fund; creation; amounts; requirements

3 * * *

4 B.

5 * * *

6 (2)(a) There is hereby established a special fund in the state treasury to be
7 known as the Oil and Gas Regulatory Fund, hereafter referred to as the "fund". After
8 deposit in the Bond Security and Redemption Fund and after a sufficient amount is
9 allocated from that fund to pay all the obligations secured by the full faith and credit
10 of the state that become due and payable within each fiscal year, the treasurer shall
11 pay into the fund an amount equal to the monies generated from collection of the
12 fees provided for in this Title, R.S. 40:1749.11 et seq., or Title 47 of the Louisiana
13 Revised Statutes of 1950, the rules and regulations promulgated thereunder, any
14 fines and civil penalties or any other provision of law relative to fees, fines, or civil
15 penalties attributable to the office of conservation, and fifty percent of any annual
16 assessment paid by an operator who chooses not to plug a well classified as inactive
17 with the remainder being deposited into the Oilfield Site Restoration Fund.

18 * * *

19 §544. Violation; penalties, civil and criminal

20 A.(1) Any person who shall be determined by the assistant secretary, after
21 notice and an opportunity for a hearing, to have violated any provision of this
22 Chapter or any rule, regulation, or order promulgated or issued under this Chapter
23 shall be liable to the office of conservation for a civil penalty not to exceed ~~ten two~~
24 hundred thousand dollars for each violation for each day that the violation persists,
25 except that the maximum civil penalty shall not exceed ~~five hundred thousand two~~
26 million dollars for any related series of violations.

27 * * *

28 Section 2. R.S. 40:1749.23(A) is hereby amended and reenacted and R.S.
29 40:1749.12(17) and (18) and 1749.27 are hereby enacted to read as follows:

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §1749.12. Definitions

2 As used in this Part, the following terms have the meanings ascribed to them
3 in this Section:

4 * * *

5 (17) "Commissioner" means the commissioner of conservation.

6 (18) "Pipeline" means all intrastate and interstate pipeline facilities defined
7 by 49 CFR 192.3 and 49 CFR 195.2.

8 * * *

9 §1749.23. Enforcement and adjudication; administration; levy of civil penalties

10 A. ~~The~~ Except as provided in R.S. 40:1749.27, the provisions of this Part
11 may be enforced by the Department of Public Safety and Corrections or by any local
12 law enforcement agency. The Department of Public Safety and Corrections or its
13 designee may provide forms, including citation, complaint, and incident report
14 forms, to other law enforcement agencies for use in enforcement of the provisions
15 of this Part.

16 * * *

17 §1749.27. Enforcement for the prevention of damage to pipelines; authority of the
18 commissioner; administration; violations; penalties; disposition of monies

19 A.(1) Notwithstanding the provisions of R.S. 40:1749.23, the commissioner
20 shall have exclusive authority to enforce the provisions of this Part as it applies to
21 the prevention of damage to pipelines.

22 (2) The provisions of this Section shall not be construed in any manner to
23 limit or otherwise restrict either of the following:

24 (a) The general powers of the commissioner as authorized by Subtitle I of
25 Title 30 of the Louisiana Revised Statutes of 1950.

26 (b) The authority of the Department of Public Safety and Corrections as
27 established pursuant to the Hazardous Materials Information Development,
28 Preparedness, and Response Act, R.S. 30:2361 et seq. or the Hazardous Materials
29 Transportation and Motor Carrier Safety Act, R.S. 32:1501 et seq.

1 B. For the prevention of damage to pipelines, the powers of the
2 commissioner shall include but are not limited to the following:

3 (1) Monitoring any excavation or demolition, including requests for the
4 excavator or demolisher to provide the locate request number issued by a regional
5 notification center.

6 (2) Issuing citations or ordering other penalties or remedies.

7 (3) Seeking restraining orders, injunctions, or any other available civil
8 remedies.

9 (4) Utilizing any other enforcement powers that may be provided by law.

10 C. The commissioner or his designee shall promulgate rules and regulations
11 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950
12 et seq., for the necessary and proper implementation and administration of the
13 provisions of this Part, including the implementation of a procedure to report and
14 investigate any reasonable complaint regarding a violation of this Part. The
15 procedure shall include all of the following:

16 (1) Establishing a centralized complaint reporting point using a toll-free
17 phone number that is available to contractors, excavators, pipeline owners or
18 operators, and the general public. The centralized complaint reporting system shall
19 neither be combined with nor in conflict with the Hazardous Incidents Tracking
20 System hazardous material hotline.

21 (2) Establishing a uniform complaint form to record the complainant's name
22 and identifying information, the nature and details of the complaint, the geographic
23 location of the complaint, any information about parties involved in the complaint
24 or incident, the date and time of the complaint, the date and time of the complaint
25 report, and whether any collateral damage or off-site impact incurred, including
26 information about the impact or damage. The uniform complaint form shall neither
27 replace nor conflict with the uniform complaint form provided for in R.S.
28 40:1749.23(D).

1 (3) Investigating the validity of any complaint using any relevant
2 information, including but not limited to any information provided by excavators,
3 pipeline owners or operators, or a regional notification center with jurisdiction in the
4 reported geographic area.

5 (4) Obtaining all information needed to issue a citation, order any other
6 appropriate remedy, or otherwise adjudicate any complaint determined to be valid.

7 D.(1)(a) The commissioner shall adjudicate all violations involving the
8 prevention of damage to pipelines and assess civil penalties or other civil remedies
9 for those violations of this Part.

10 (b) All civil penalties or other civil remedies assessed by the commissioner
11 pursuant to this Part shall be assessed in the same manner as prescribed by R.S.
12 30:544, including consideration of all of the following factors:

13 (i) The nature, circumstances, and gravity of the relevant violation.

14 (ii) The degree of culpability, history of prior violations, the effect on ability
15 to continue to do business, any good faith in attempting to achieve compliance,
16 ability to pay the penalty, and such other matters as justice requires with respect to
17 the person found to have committed the violation.

18 (c) Damage prevention education shall be a component of each penalty or
19 remedy imposed by the commissioner.

20 (2) All monies received or collected by the commissioner pursuant to his
21 enforcement of the provisions of this Part as they apply to the prevention of damage
22 to pipelines shall be deposited immediately upon receipt in the state treasury and
23 shall be credited to the Oil and Gas Regulatory Fund, R.S. 30:21.

24 Section 3. Prior to complete implementation of the provisions of this Act,
25 particularly the exclusive enforcement responsibilities as provided in R.S. 40:1749.27(A)(1),
26 the office of conservation of the Department of Natural Resources shall enter into a
27 Memorandum of Understanding with the office of state police of the Department of Public
28 Safety and Corrections to delineate shared responsibilities through a transition period until
29 such time as the office of conservation has promulgated and finally adopted the rules

1 required by R.S. 40:1749.27(A). At such time as the office of conservation has finally
 2 adopted the rules required by R.S. 40:1749.27(A), the provisions of this Act shall be
 3 completely implemented and the commissioner of conservation shall have exclusive
 4 authority to enforce the provisions of R.S. 40:1749.27.

5 Section 4. This Act shall become effective upon signature by the governor or, if not
 6 signed by the governor, upon expiration of the time for bills to become law without signature
 7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 8 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 9 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 389 Reengrossed

2017 Regular Session

Carmody

Abstract: Authorizes the commissioner of conservation of the La. Department of Natural Resources to enforce the La. Underground Utilities and Facilities Damage Prevention (OneCall) law as it applies to pipelines.

Proposed law provides that the commissioner of conservation shall have exclusive authority to enforce the provisions of OneCall law as it applies to pipelines.

Proposed law provides that it shall not be construed in any manner to limit or otherwise restrict either of the following:

- (1) The general powers of the commissioner of conservation.
- (2) The authority of the Dept. of Public Safety and Corrections as established pursuant to present law (R.S. 30:2361 et seq.) including the Hazardous Materials Transportation and Motor Safety Carrier Act.

Present law provides that for violations of the Natural Resources and Energy Act of 1973, there is a maximum civil penalty of \$10,000 for each violation for each day and a maximum penalty of \$500,000 for any related series of violations. Proposed law increases those maximums to \$200,000 per violation per day and \$2 million for any related series of violations.

Proposed law provides that the powers of the commissioner of conservation include but are not limited to the following responsibilities regarding application of the OneCall law to pipelines:

- (1) Monitoring any excavation or demolition, including requests for the excavator or demolisher to provide the locate request number issued by a regional notification center.
- (2) Issuing citations or ordering other penalties or remedies.

- (3) Seeking restraining orders, injunctions, or any other available civil remedies.
- (4) Utilizing any other enforcement powers that may be provided by law.

Proposed law requires the commissioner of conservation or his designee to promulgate rules and regulations for the necessary and proper implementation and administration of the provisions. Proposed law requires the commissioner of conservation to develop a procedure for investigating and reporting any reasonable complaint regarding a violation of the OneCall law as it applies to pipelines, and the procedure shall include all of the following:

- (1) Establishing a centralized complaint reporting point using a toll-free phone number that is available to contractors, excavators, pipeline owners or operators, and the general public. Provides that this system does not replace nor conflict with the existing system.
- (2) Establishing a uniform complaint form to record the complainant's name and identifying information; the nature and details of the complaint; the geographic location of the complaint; any information about parties involved in the complaint or incident, the date and time of the complaint, the date and time of the complaint report, and whether any collateral damage or off-site impact incurred, including information about the impact or damage. Provides that this form does not replace nor conflict with the existing form.
- (3) Investigating the validity of any complaint using any relevant information, including but not limited to any information provided by excavators, pipeline owners or operators, or a regional notification center with jurisdiction in the reported geographic area.
- (4) Obtaining all information needed to issue a citation, order any other appropriate remedy, or otherwise adjudicate any complaint determined to be valid.

Proposed law requires the commissioner of conservation to adjudicate all violations of the OneCall law involving pipelines and assess civil penalties or other civil remedies for any violations of the OneCall law.

Proposed law provides that all civil penalties or other civil remedies assessed by the commissioner of conservation shall be assessed in the same manner as prescribed by present law (R.S. 30:544), including consideration of all of the following factors:

- (1) The nature, circumstances, and gravity of the relevant violation.
- (2) The degree of culpability, history of prior violations, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty, and such other matters as justice requires with respect to the person found to have committed the violation.

Proposed law requires damage prevention education to be a component of all penalties and remedies imposed by the commissioner of conservation.

Proposed law requires all monies received or collected by the assistant secretary pursuant to enforcement of the OneCall law as it applies to pipelines to be deposited immediately upon receipt in the state treasury and shall be credited to the Oil and Gas Regulatory Fund.

Proposed law provides for a process and time line for transition of the responsibilities from the office of state police to the office of conservation through a memorandum of understanding entered into between the two offices. Further provides that at such time as the office of conservation has finally adopted the rules required by this Act, the exclusive

authority to enforce the provisions of the OneCall law as it applies to pipelines shall reside with the commissioner of conservation.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 30:21(B)(2)(a) and 544(A)(1) and R.S. 40:1749.23(A); Adds R.S. 30:4(S) and R.S. 40:1749.12(17) and (18) and 1749.27)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Natural Resources and Environment to the original bill:

1. Provide that the bill authorizes the commissioner of conservation to enforce the Louisiana Underground Utilities and Facilities Damage Prevention (OneCall) law as it applies to pipelines.
2. Increase the authorized civil penalties applicable to violations under the Natural Resources and Energy Act of 1973 from \$10,000 to \$200,000 for each day a violation exists and from \$500,000 to \$2 million for a maximum for any related series of violations.

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Provide that the law specifically does not limit or restrict the Hazardous Materials Transportation and Motor Safety Carrier Act.
2. Provide that the centralized complaint system and form developed by the commissioner of conservation do not replace nor conflict with the systems already established by the State Police for the OneCall system.
3. Include all parties, including the contractors, excavators, pipeline owners and operators, and the public are involved in the system throughout the process.
4. Require damage prevention education to be a component of all penalties and remedies imposed by the commissioner of conservation.
5. Provide for a process and time line for transition of the responsibilities from the office of state police to the office of conservation through a memorandum of understanding entered into between the two offices. Further provide that at such time as the office of conservation has finally adopted the rules required by this Act, the exclusive authority to enforce the provisions of the OneCall law as it applies to pipelines shall reside with the commissioner of conservation.