

2017 Regular Session

HOUSE BILL NO. 389

BY REPRESENTATIVE CARMODY

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AN ACT

To amend and reenact R.S. 30:21(B)(2)(a) and R.S. 40:1749.23(A) and to enact R.S. 30:4(S) and R.S. 40:1749.12(17) and (18) and 1749.27, relative to the Louisiana Underground Utilities and Facilities Damage Prevention Law; to provide for the authority of the commissioner of conservation to enforce laws for the prevention of damage to pipelines; to provide for and require certain procedures; to provide for adjudication of violations; to provide for penalties and other remedies; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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

* * *

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

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

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B.

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

13 * * *

14 Section 2. R.S. 40:1749.23(A) is hereby amended and reenacted and R.S.
 15 40:1749.12(17) and (18) and 1749.27 are hereby enacted to read as follows:

16 §1749.12. Definitions

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

19 * * *

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

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

23 * * *

24 §1749.23. Enforcement and adjudication; administration; levy of civil penalties

25 A. ~~The~~ Except as provided in R.S. 40:1749.27, the provisions of this Part
 26 may be enforced by the Department of Public Safety and Corrections or by any local
 27 law enforcement agency. The Department of Public Safety and Corrections or its

1 designee may provide forms, including citation, complaint, and incident report
 2 forms, to other law enforcement agencies for use in enforcement of the provisions
 3 of this Part.

4 * * *

5 §1749.27. Enforcement for the prevention of damage to pipelines; authority of the
 6 commissioner; administration; violations; penalties; disposition of monies

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

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

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

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

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

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

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

24 (3) Seeking restraining orders, injunctions, or any other available civil
 25 remedies.

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

27 C. The commissioner or his designee shall promulgate rules and regulations
 28 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950

1 et seq., for the necessary and proper implementation and administration of the
2 provisions of this Part, including the implementation of a procedure to report and
3 investigate any reasonable complaint regarding a violation of this Part. The
4 procedure shall include all of the following:

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

10 (2) Establishing a uniform complaint form to record the complainant's name
11 and identifying information, the nature and details of the complaint, the geographic
12 location of the complaint, any information about parties involved in the complaint
13 or incident, the date and time of the complaint, the date and time of the complaint
14 report, and whether any collateral damage or off-site impact incurred, including
15 information about the impact or damage. The uniform complaint form shall neither
16 replace nor conflict with the uniform complaint form provided for in R.S.
17 40:1749.23(D).

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

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

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

1 **(b) All civil penalties or other civil remedies assessed by the commissioner**
 2 **pursuant to this Part shall be assessed in the same manner as prescribed by R.S.**
 3 **30:544, including consideration of all of the following factors:**

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

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

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

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

15 Section 3. Prior to complete implementation of the provisions of this Act,
 16 particularly the exclusive enforcement responsibilities as provided in R.S. 40:1749.27(A)(1),
 17 the office of conservation of the Department of Natural Resources shall enter into a
 18 Memorandum of Understanding with the office of state police of the Department of Public
 19 Safety and Corrections to delineate shared responsibilities through a transition period until
 20 such time as the office of conservation has promulgated and finally adopted the rules
 21 required by R.S. 40:1749.27(A). At such time as the office of conservation has finally
 22 adopted the rules required by R.S. 40:1749.27(A), the provisions of this Act shall be
 23 completely implemented and the commissioner of conservation shall have exclusive
 24 authority to enforce the provisions of R.S. 40:1749.27.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____