

2009 SENATE NATURAL RESOURCES

SB 2138

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2138

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 15, 2009

Recorder Job Number: 7046

Committee Clerk Signature



Minutes:

**Senator Lyson** opened hearing on SB 2138. All members of the committee were present.

**Illona A. Jeffcoat-Sacco**, General Counsel for the Public Service Commission, introduced the bill (see attached testimony #1).

**Senator Lyson** asked can we charge someone who is not in violation.

**Illona Jeffcoat-Sacco** replied the provision that applies every division in 28-32, you have an investigation and if you find a violation then you can assess the cost. We were faced with testing the pipe in the Fargo explosion. We had to have the pipe tested to find out the issues, but it wasn't fair for the tax payers to pay for it and it wasn't in our budget. We knew we didn't have the authority to charge, except under 28-32. We didn't have a lot of time to research it, but I am sure something can be worked out it will just take a little time.

**Senator Hogue** asked if the commission had discussed any type of cap. There is a cap for actual violations, but under this bill there isn't one.

**Illona Jeffcoat-Sacco** replied that they did not discuss one, but I would be willing to take it to the commission and work on it.

**Kevin Kramer**, Public Service Commissioner, as it stands we have a tremendous incentive to find companies in violation.

**Bob Graveline**, Utility Share Holders of North Dakota, appeared in opposition of the bill. We think the state is double dipping. We heard comments a few moments ago that the United States Department of Transportation sends money back to the state to help fund their pipeline safety program. A good share of those dollars are coming from the interstate gas pipeline companies and utility companies that pay the fees to the USDOT, and they then send those dollars back to the state. We agree with the chairman's concern about having to pay a fine for a potential, possible or no violation at all. There have been other pipelines to rupture in the state and the companies have experienced these issues. They have taken sections of the pipe and sent them off to the lab. The question then is who owns that section of pipe that is being sent to the lab. These tests are destructive tests and can only be performed once. The interests of the pipeline owner as well as the public and regulator need to be considered before the testing parameters are set. By paying up front to the USDOT the companies have already paid adequately for "whether a violation has been found".

**Senator Triplett** can you give us some understanding about how much the utilities pay into the office of pipeline safety.

**Bob Graveline** replied it is a wonderful question and I spent about 4 hours yesterday trying to find out, but I will do my best to get back to you.

**Ron Ness**, North Dakota Petroleum Council, we stand in opposition of this bill today.

Specifically for the broad authority it creates on line 22, a potential violation. There should be some type of authority given to the commission set aside funds to use in whatever situation they have. We will not support the bill in its current form or as amended, but we would be supportive of the agency and their efforts to try and find a way to a mechanism to fund these situations as they arise.

**Senator Triplett** can you give us some understanding on how much your office gets back from the office of pipeline safety.

**Illona Jeffcoat-Sacco** replied I don't have the dollar amount with me, but I know it is 40% of the program. We get back 40% of what it costs us to do the inspection. That can go up if we have additional man hours of inspection.

**Senator Triplett**, replied so it is not that money just comes back and lays in a fund for you to be available, but you spend the money and then voucher it to the office of pipeline safety and they reimburse you up to 40% of your costs.

**Illona Jeffcoat-Sacco** responded that is correct. One of the things I am going to do is to find out, when we write that grant, if there is a spot for asking for money for this situation. We are going to look for alternate solutions.

**Senator Lyson** closed the hearing on SB 2165.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2138

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 23, 2009

Recorder Job Number: 7625

Committee Clerk Signature
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Minutes:

**Senator Lyson** opened the discussion for SB 2138, relating to assessing the costs of investigating a potential violation of pipeline safety standards. One member was absent.

**Senator Triplett** moves a do not pass.

**Senator Freborg** seconds the motion.

**Senator Hogue** I think the provision that is most troubling to some committee members is the notion that we would make a subject of an investigation pay for it in the event that the Public Service Commission did not find a violation. As someone who practices in the regulated industries I can tell you that it is common practice in not just pipeline safety but many other regulated industries that the applicant and the person doing the business and the regulated entity pays for the investigation. The idea that a pipeline company has to pay for an investigation even though they are found not at fault, although it seems unfair to us in our individual capacities, regulated businesses do this all the time in most states. I had a discussion with Illona Jeffcoat-Sacco and asked her to put some type of cap on it so that it would relieve some of the concern of the committee members. I don't think it is unreasonable when they get a complaint and they have to investigate and they have to incur costs, I don't think it is unreasonable to expect that the pipeline is going to have to pay for this. The other

point is that the commission gets some money back through FERK for pipeline safety fund. It is my understanding that what the commission has to do is apply for a grant from FERK and then FERK has the discretion to reimburse the commission. I am comfortable with 2138, primarily because I am comfortable with our three Public Service Commissioners and I don't think their likely to abuse this and I do think this is a common practice in regulated industries. I am opposed to the motion

**Senator Triplett** I share the confidence in our three Public Service Commissioners, but I don't think we should be writing laws based on the personnel of who currently holds the office. It is our job to set reasonable policy limits for whoever might be in the position. I don't disagree that there should be some mechanism for the PSC to recover the costs. Obviously, if they have to do an investigation their over and above what their appropriations are, there should be some mechanism. I think we expressed some concern at the time of the hearing and they didn't come up with any alternatives for us and I don't know that it is our job to think of all the creative alternatives that might be out there. If someone in committee has an alternative I would certainly be willing to listen to it. For someone to be sort of specifically required to pay the costs of a potential violation even when there turns out to be no violation does seem like it leaves companies open for inappropriate investigations, if you will. I am not suggesting our PSC would initiate such things, but there are people out there who are opposed to pipelines who will continually bring complaints and requests for investigation and the PSC feels they have to be out there doing this investigations.

**Senator Lyson** when I talked to different people in the industries I found that the amount of money they pay for taxes going into the pipeline and so on, that money is going back to the Public Service Commission. With a portion of that I would think that they would be able to create a fund for things like this.

Roll call was taken 6 yeas, 1 no, **motion passed**.

SB 2138 was held open to allow Senator Erbele to vote.

**FISCAL NOTE**  
 Requested by Legislative Council  
 12/23/2008

Bill/Resolution No.: SB 2138

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Allows the Commission to assess the costs of investigating a potential pipeline safety violation to the entity being investigated, even if no violation is found.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

No fiscal impact of any consequence is expected. Such inspections are rare and costs are not expected to be great enough to impact appropriations.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

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C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

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<b>Name:</b>	Illona A, Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	328-2407	<b>Date Prepared:</b>	12/29/2008

Date: Jan 23 - 2009

Roll Call Vote #: 2138

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."**

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass

Motion Made By Sen. Triplett Seconded By Sen. Freborg

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman		/	Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 6 No 1

Absent 1

Floor Assignment Sen. Triplett

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2138: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2138 was placed on the Eleventh order on the calendar.**

2009 TESTIMONY

SB 2138

**Senate Bill 2138**

**Presented by:** Illona A. Jeffcoat-Sacco  
General Counsel  
Public Service Commission

**Before:** Natural Resources Committee  
Honorable Stanley W. Lyson, Chairman

**Date:** January 15, 2009

**TESTIMONY**

Mr. Chairman and members of the Senate Natural Resources Committee, I am Illona A. Jeffcoat-Sacco, General Counsel for the Public Service Commission. The Commission asked me to appear today in support of Senate Bill 2138, which was introduced at our request.

The Commission's gas pipeline safety program has safety enforcement jurisdiction over intrastate gas pipelines, which include gas transmission lines that begin and end within the boundaries of North Dakota, and gas distribution lines that serve retail customers in cities and towns across the state through a system of gas mains and gas service lines. The purpose of the program is to ensure that jurisdictional facilities are designed, constructed and operated to meet the safety standards set out in the regulations of the Office of Pipeline Safety in the United States Department of Transportation.

It is the intent of this bill to allow the Commission to recoup out of pocket costs and expenses specifically associated with obtaining technical expertise or analysis during an investigation prompted by an initial inspection that indicates a probable violation may have occurred. One example might be hiring a laboratory

to conduct tests on plastic or steel pipe or pipe welds. Another could be paying for tests to determine remaining wall thickness on heavily corroded steel pipe, etc.

We currently have a contract with a laboratory to test the pipe at issue in the Fargo incident, at a cost to the commission of over \$5000. Under current law (N.D.C.C. Chapter 28-32), if no violation is found, we cannot ask the operator to pay for this testing. Our only purpose in proposing this bill is to provide a way for the Commission to pay for this type of extraordinary investigation expense.

Please note that costs associated with the day to day operations of the gas pipeline safety program, such as salary and benefits, travel and per diem, training, etc. would not qualify as reimbursable under this bill.

We understand that industry has some concerns that the bill may be too broad, and we have drafted a proposed amendment (attached) to emphasize the limited applicability of our proposal.

That concludes my testimony. I would be happy to answer any questions you have.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2138

Page 1, line 22, replace the second "the" with "reasonable out-of-pocket"

Page 1, line 22, after "costs" insert "and expenses"

Page 1, line 23, after "costs" insert "or expenses"

Renumber accordingly