

House And Senate Pipeline Bills: Ships Passing In The Night

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The Pipeline Safety Act establishes minimum safety standards for all hazardous liquid and natural gas pipelines in the U.S. The act expires at the end of September, and is up for reauthorization this year, as it is every four years. Congress has held four hearings to date (three in the House and one in the Senate), during which it has received testimony from various stakeholders, including state and federal agency representatives, the U.S. [Transportation Security Administration](#), industry trade groups and public interest groups.

Four different legislative proposals have been floated, with the House and the Senate Committees with oversight of reauthorization each reporting out one bill. At this point, there is not much common ground between the House and the Senate, and it seems unlikely that a reauthorization bill will pass both houses before Sept. 30.

Several draft reauthorization proposals have been released. A bill titled the Leonel Rondon Pipeline Safety Act was introduced in April to the Senate (S. 1097) and the House (H.R. 2139). These bills were sponsored by Sen. Ed Markey, D-Mass., and Rep. Lori Trahan, D-Mass. (among other cosponsors), in response to (and named for the deceased involved in) a fatality incident that occurred last year on a natural gas distribution line system in Massachusetts.

In June, the [U.S. Department of Transportation](#) released its own proposal for reauthorization, the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2019. Also in June, the Democratic majority in the [House Energy and Commerce Committee](#) released a “discussion draft” of a proposed bill, which was criticized for not seeking input from the Republican minority.

Both the House and the Senate have now reported out separate bills. The House revised its initial draft and reported out a new version, the Safer Pipelines Act of 2019 (H.R. 3432), which is more bipartisan, but still strongly influenced by the Democratic majority. The Senate produced its own bill, the PIPES Act of 2019 (S. 2299), which at the last minute adopted some of the “Leonel Rondon” provisions as Title II to the bill. A final amendment was added by Sen. Tom Udall, D-N.M., specific to gathering pipelines.

Although both bills are in varying stages of review, there are some notable differences in the bills, reflecting contrasts between the Democratic majority in the House and the Republican majority in the Senate. Neither bill has been put before the entire chamber for a vote.

If they do progress further, it remains to be seen how the bills will ultimately be reconciled. As illustrated in the table below, there is currently very little overlap between the two bills beyond the fact that they would both fund the U.S. [Pipeline and Hazardous Materials Safety Administration](#) through 2023.



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**Pipeline Safety Act Reauthorization 2019
Comparison of House and Senate Committee Bills***

Topic	<i>H.R. 3432, The Safer Pipelines Act of 2019</i> House Energy & Commerce Committee Bill	<i>S. 2299, PIPES Act of 2019</i> Senate Commerce Committee Bill
Cost-Benefit Analysis	Remove CBA analysis requirement for rulemaking (Sec. 3(a))	—
Funding/Staffing	\$160M to \$175M for FY 2020-2023 (Sec. 2); workforce plan (Sec. 9)	\$147M to \$159M for FY-2020-2023 (Sec. 101); report on inspector training and staff needs; direct hire authority (Sec. 102)
Reporting	Increases safety related condition reporting to state and local responders/on-scene coordinators (Sec. 3(b)); adds more state and local reporting requirements (Sec. 5)	—
Operation & Maintenance	Requires automatic or remote shutoff valves on transmission lines in HCAs based on a risk assessment “as appropriate” within 2 years (unless PHMSA rulemaking requires the same or equivalent technology) (Sec. 4(b))	—
Integrity Management	Rules to prioritize integrity assessment methods over direct assessment for transmission pipelines; DOT report on alternate methods of assessment for distribution pipelines (Sec. 4)	—
Public Awareness	Expands community right-to-know and planning; requires operators to review/update existing plans (Sec. 5)	—
Access to Information	Requires greater access to IMP and emergency response plans and system maps; annual pipeline segment reports (Sec. 5)	—
Civil Penalties	Increases maximum penalties for a “related series of violations” to \$2M (Sec. 7)	—

Criminal Liability	Revises criminal liability standard to include violations committed “knowingly or recklessly” (Sec. 8)	—
Public Right to Sue	Adds a “mandamus” provision allowing any party to compel PHMSA to perform a nondiscretionary duty (Sec. 6)	—
Gathering Pipelines	—	90-day deadline for completion of gas gathering pipeline rulemaking; GAO study/report on gas and oil gathering line design and material data collection and mapping (Udall amendment)
Distribution Pipelines	—	Regulations regarding (1) DIMP programs; (2) emergency response plans; (3) operation and maintenance plans; (4) requiring traceable, reliable and complete records and maps to ensure proper pressure controls; (5) district regulator stations to ensure redundancy; and (6) requiring one OQ-qualified person to monitor and be able to shut down gas flow during construction projects with potential for overpressure; review distribution SMS plans and implementation, and provide guidance or recommendations on the same (Sec. 202-205, Title II, Leonel Rondon Pipeline Safety Act)
LNG Facilities	—	Part 193 siting compliance review fees for ≥ \$2.5B; update Part 193; national center for LNG safety and training (Sec. 104, 111-113)
Due Process in Enforcement Actions	—	Option for formal ALJ hearing; open to the public; expressly allowance for settlement; declaratory orders; make recommended decision available (Sec. 109)

Idled Pipelines	—	Defines idled pipe and requires regulations for managing/inspecting (Sec. 110)
Voluntary Incentives	—	Safety-enhancing testing technologies and programs (Sec. 105-106); self-disclosure and correction of violations as civil penalty factor (Sec. 108)

*This table reflects a high-level summary of the major substantive provisions of H.R. 3432 and S. 2299. It is not a comprehensive comparison of the proposed legislation.

As shown above, H.R. 3432 focuses on changes to civil penalties, criminal liability, rulemaking requirements (such as eliminating cost-benefit analysis and expanding public awareness and community right-to know information) and specific valve requirements, as well as rules and a study intended to limit direct assessment as an option for demonstrating system integrity.

In contrast, S. 2299 would require PHMSA to finalize and/or issue rules regarding gas gathering (within 90 days), distribution pipelines (based on proposals from the Leonel Rondon Pipeline Safety Act, H.R.2139/S. 1097), liquefied natural gas facilities and idled pipelines. S. 2299 would also outline additional procedures and options for contesting PHMSA enforcement actions by statute, and provide industry with certain voluntary incentive programs, including credit for self-disclosure and correction of a violation.

Both pending bills have some elements that address industry and public interest concerns, but to varying degrees. The House bill, as currently drafted, would have the most impact on the pipeline industry. The more controversial provisions in H.R. 3432 include changes to the civil and criminal liability standards, removal of the current cost-benefit review for new rulemaking, and certain portions of the reporting requirements which could make information that is currently retained as confidential and/or security sensitive available to the public.

On the Senate side, the provisions in S. 2299 that are likely to be most subject to further discussion include new proposed requirements for idled pipelines, prioritization of the gas gathering rulemaking and expanded requirements for gas distribution lines. Additional requirements for either gas gathering or distribution lines are likely a concern for industry, but proposed changes to administrative process and management of idled lines would be welcomed.

While the comparison table shows that there is virtually no overlap between the two pending bills, the two chambers of Congress often develop competing versions of proposed amendments on similar topics, particularly when it comes to bipartisan topics such as pipeline safety. In this case, the bills are almost like ships passing in the night. It is unlikely that Congress will agree to simply sew the House and Senate bills together into one larger amendment of the Pipeline Safety Act.

More probable is some give and take between the two bills, which will likely involve dropping some items from each chamber's bill. At present, there does not appear to be much likelihood of additional items being added to the final bill that are not currently in the two versions. That said, Sen. Udall has expressed his intention to push a proposal for more robust methane leak

detection requirements when S. 2299 is put before the entire Senate.

It is difficult to predict how the differences between these two bills will ultimately be resolved. Given the balance of power in Washington at present, however, the Senate may have more influence in discussions to develop a final bill, if only because there is little chance a bill that is too expansive will be signed into law. The deadline to reauthorize the Pipeline Safety Act and continue funding PHMSA is Sept. 30, 2019. In light of the competing legislation in the House and the Senate, and the fact that Congress recesses for the month of August, it may be unlikely that the deadline is met.

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