

FILED FEB 12 1998

NAT. RES. & ENVIRONMENT

SENATE FILE 2201

BY REHBERG

2/24/98 Do Pass
3/2/98 Commerce & Regulation
H. 3/18/98 Do Pass
H. 3/26/98 Unfinished Bus Calendar

Passed Senate, ^(p. 630) Date 3/11/98 Passed House, ^(p. 1197) Date 4-2-98
Vote: Ayes 48 Nays 0 Vote: Ayes 99 Nays 0
Approved April 15, 1998

A BILL FOR

1 An Act relating to security for damages arising from the
2 abandonment of natural gas pipelines.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2201

1 Section 1. Section 479A.12, Code 1997, is amended to read
2 as follows:

3 479A.12 FINANCIAL CONDITION OF COMPANY -- BOND OR OTHER
4 SECURITY.

5 Before construction is begun by a pipeline company, the
6 company shall satisfy the board that the company has property
7 subject to execution within this state other than pipelines,
8 of a value in excess of two hundred fifty thousand dollars, or
9 the company must file and maintain with the board a surety
10 bond in the penal sum of two hundred fifty thousand dollars
11 with surety approved by the board, conditioned that the
12 company will pay any and all damages legally recovered against
13 it growing out of the construction, abandonment, or operation
14 of its pipeline and underground storage facilities in this
15 state, or the company shall deposit with the board security
16 satisfactory to the board as a guaranty for the payment of
17 that amount of damages, or furnish to the board satisfactory
18 proofs of its solvency and financial ability to pay that
19 amount of damages.

20 EXPLANATION

21 This bill amends Code section 479A.12 relating to the
22 financial condition of natural gas pipeline companies.

23 The bill amends this Code section to include damages
24 arising out of the abandonment of pipelines and underground
25 storage facilities as damages for which a surety bond,
26 guaranty, or proof of solvency must be provided.

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SENATE FILE 2201

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1 Amend Senate File 2201 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 479.29, Code 1997, is amended
5 to read as follows:

6 479.29 CONSTRUCTION-STANDARDS LAND RESTORATION.

7 1. The board shall, pursuant to chapter 17A, adopt
8 rules establishing standards for ~~the protection of~~
9 ~~underground improvements during the construction of~~
10 ~~pipelines, to protect soil conservation and drainage~~
11 ~~structures from being permanently damaged by pipeline~~
12 ~~construction and for the restoration of agricultural~~
13 ~~lands during and after pipeline construction. To~~
14 ~~ensure that all interested persons are informed of~~
15 ~~this rulemaking procedure and are afforded a right to~~
16 ~~participate, the board shall schedule an opportunity~~
17 ~~for oral presentations on the proposed rulemaking,~~
18 ~~and in addition to the requirements of section~~
19 ~~17A.4, the board shall distribute copies of the notice~~
20 ~~of intended action and opportunity for oral~~
21 ~~presentations to each county board of supervisors.~~
22 Any county board of supervisors may, under the
23 provisions of chapter 17A, and subsequent to the
24 rulemaking proceedings, petition under those
25 provisions for additional rulemaking to establish
26 standards ~~to protect soil conservation practices,~~
27 ~~structures and drainage structures for land~~
28 ~~restoration after pipeline construction within that~~
29 ~~county. Upon the request of the petitioning county~~
30 ~~the board shall schedule a hearing to consider the~~
31 ~~merits of the petition. Rules adopted under this~~
32 ~~section shall not apply within the boundaries of a~~
33 ~~city, unless the land is used for agricultural~~
34 ~~purposes. Rules adopted under this section shall not~~
35 ~~apply to land located within city boundaries, unless~~
36 ~~the land is used for agricultural purposes. Rules~~
37 ~~adopted under this section shall address, but are not~~
38 ~~limited to, all of the following subject matters:~~

- 39 a. Topsoil separation and replacement.
40 b. Temporary and permanent repair to drain tile.
41 c. Removal of rocks and debris from the right-of-
42 way.
43 d. Restoration of areas of soil compaction.
44 e. Restoration of terraces, waterways, and other
45 erosion control structures.
46 f. Revegetation of untilled land.
47 g. Future installation of drain tile or soil
48 conservation structures.
49 h. Restoration of land slope and contour.
50 i. Restoration of areas used for field entrances

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1 and temporary roads.

2 j. Construction in wet conditions.

3 k. Designation of a pipeline company point of
4 contact for landowner inquiries or claims.

5 2. The county board of supervisors shall cause an
6 on-site inspection for compliance with the standards
7 adopted under this section to be performed at any
8 pipeline construction project in the county. A
9 licensed professional engineer familiar with the
10 standards adopted under this section and registered
11 under chapter 542B shall be in responsible charge of
12 the inspection. A county board of supervisors may
13 contract for the services of a licensed professional
14 engineer for the purposes of the inspection. The
15 reasonable costs of the inspection shall be borne by
16 the pipeline company.

17 3. If the inspector determines that there has been
18 a violation of the standards adopted under this
19 section, of the land restoration plan, or of an
20 independent agreement on land restoration or line
21 location executed in accordance with subsection 10,
22 the inspector shall give oral notice, followed by
23 written notice, to the pipeline company and the
24 contractor operating for the pipeline company and
25 order corrective action to be taken in compliance with
26 the standards. The costs of the corrective action
27 shall be borne by the contractor operating for the
28 pipeline company.

29 ~~4. As a part of the inspection process, the~~
30 ~~inspector shall ascertain that the trench excavation~~
31 ~~has been filled in a manner to provide that the~~
32 ~~topsoil has been replaced on top and rocks and debris~~
33 ~~have been removed from the topsoil of the easement~~
34 ~~area. An existing topsoil layer extending at least~~
35 ~~one foot in width on either side of the pipeline~~
36 ~~excavation at a maximum depth of twelve inches shall~~
37 ~~be removed separately and shall be stockpiled and~~
38 ~~preserved separately during subsequent construction~~
39 ~~operations, unless other means for separating the~~
40 ~~topsoil are provided in the easement. The topsoil~~
41 ~~shall be replaced so the upper portion of the pipeline~~
42 ~~excavation and the crowned surface shall contain only~~
43 ~~the topsoil originally removed.~~

44 5. 4. Adequate inspection of The inspector shall
45 adequately inspect underground improvements altered
46 during construction of pipeline. The inspection shall
47 be conducted at the time of the replacement or repair
48 of the underground improvements. An The inspector
49 shall be present on the site at all times at each
50 phase and separate activity of the opening of the

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1 trench, the restoration of underground improvements,
2 and backfilling. The pipeline company and its
3 contractor shall keep all county inspectors
4 continually informed of the work schedule and any
5 schedule changes. If proper notice is given,
6 construction shall not be delayed due to the
7 inspector's failure to be present on the site.

8 ~~6- 5.~~ If the pipeline company or its contractor
9 does not comply with the orders of the inspector for
10 compliance with the standards, with the land
11 restoration plan, or with an independent agreement on
12 land restoration or line location executed in
13 accordance with subsection 10, the county board of
14 supervisors may ~~direct the county attorney to petition~~
15 ~~the district court~~ petition the board for an order
16 requiring corrective action to be taken in compliance
17 with the standards adopted under this section. In
18 addition, the county board of supervisors may file a
19 complaint with the board seeking imposition of civil
20 penalties pursuant to section 479.31.

21 ~~7- 6.~~ The pipeline company shall allow landowners
22 and inspectors to view the proposed center line of the
23 pipeline prior to commencing trenching operations to
24 insure that construction takes place in its proper
25 location.

26 ~~8- 7.~~ An inspector may temporarily halt the
27 construction if the construction is not in compliance
28 with the law and the standards adopted pursuant to
29 law, the land restoration plan, or the terms of the an
30 independent agreement with the pipeline company
31 regarding topsoil removal and replacement, drainage
32 structures, soil moisture conditions or the location
33 of construction line location or land restoration
34 executed in accordance with subsection 10, until the
35 inspector consults with the supervisory personnel of
36 the pipeline company. ~~if the construction is then~~
37 ~~continued over the inspector's objection and is found~~
38 ~~to not be in compliance with the law or agreement and~~
39 ~~is found to cause damage, any civil penalty recovered~~
40 ~~under section 479.31 as a result of that violation~~
41 ~~shall be paid to the landowner.~~

42 ~~9- 8.~~ The board shall instruct inspectors
43 appointed by the board of supervisors regarding the
44 content of the statutes and rules and the inspector's
45 responsibility to require construction conforming with
46 the standards provided by this chapter.

47 ~~10- 9.~~ Any underground drain tile damaged, cut, or
48 removed shall be temporarily repaired and maintained
49 as necessary to allow for its proper function during
50 construction of the pipeline. ~~if temporary repair is~~

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1 ~~not-determined-to-be-necessary, the-exposed-line-will~~
2 ~~nonetheless-be-screened-or-otherwise-protected-to~~
3 ~~prevent-the-entry-of-any-foreign-material, small~~
4 ~~animals, etc.--into-the-tile-line-system. Petitioners~~
5 for a permit for pipeline construction shall file with
6 the petition a written land restoration plan showing
7 how the requirements of this section, and of rules
8 adopted pursuant to this section, will be met. The
9 petitioners shall provide copies of the plan to all
10 landowners of property that will be disturbed by the
11 construction.

12 10. This section does not preclude the application
13 of provisions for protecting or restoring property
14 that are different than those prescribed in this
15 section, in rules adopted pursuant to this section, or
16 in the land restoration plan, if the alternative
17 provisions are contained in agreements independently
18 executed by the pipeline company and landowner, and if
19 the alternative provisions are not inconsistent with
20 state law or with rules adopted by the board.
21 Independent agreements on land restoration or line
22 location between the landowner and pipeline company
23 shall be in writing and a copy provided to the county
24 inspector.

25 11. For purposes of this section, "construction"
26 includes the removal of a previously constructed
27 pipeline.

28 12. The requirements of this section shall apply
29 only to pipeline construction projects commenced on or
30 after June 1, 1998.

31 Sec. 2. Section 479.45, Code 1997, is amended to
32 read as follows:

33 479.45 PARTICULAR DAMAGE CLAIMS.

34 1. Compensable losses shall include, but are not
35 limited to, all of the following:

36 a. Loss or reduced yield of crops or forage on the
37 pipeline right-of-way, whether caused directly by
38 construction or from disturbance of usual farm
39 operations.

40 b. Loss or reduced yield of crops or yield from
41 land near the pipeline right-of-way resulting from
42 lack of timely access to the land or other disturbance
43 of usual farm operations, including interference with
44 irrigation.

45 c. Fertilizer, lime, or organic material applied
46 by the landowner to restore land disturbed by
47 construction to full productivity.

48 d. Loss of or damage to trees of commercial or
49 other value that occurs at the time of construction or
50 at the time of any subsequent work by the pipeline

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1 outside of the area cleared during construction.
 2 i- e. The cost of moving or relocating livestock,
 3 and the loss of gain by or the death or injury of
 4 livestock caused by the interruption or relocation of
 5 normal feeding of-the-livestock-caused-by-the
 6 construction-or-repair-of-a-pipeline-is-a-compensable
 7 loss-and-shall-be-recognized-as-such-by-a-pipeline
 8 company.

9 f. Erosion on lands caused by construction.

10 g. Damage to farm equipment caused by striking a
 11 pipeline while engaged in normal farming operations as
 12 defined in section 480.1.

13 2. A claim for damage for future crop deficiency
 14 within the easement strip shall not be precluded from
 15 renegotiation under section 6B.52 on the grounds that
 16 it was apparent at the time of settlement unless the
 17 settlement expressly releases the pipeline company
 18 from claims for damage to the productivity of the
 19 soil. The landowner shall notify the company in
 20 writing thirty days prior to harvest in each year to
 21 assess crop deficiency.

22 Sec. 3. NEW SECTION. 479.48 REVERSION ON NONUSE.

23 1. If a pipeline right-of-way, or any part of a
 24 pipeline right-of-way, is wholly abandoned for
 25 pipeline purposes by the relocation of the pipeline,
 26 is not used or operated for a period of five
 27 consecutive years, or if the construction of the
 28 pipeline has been commenced and work has ceased and
 29 has not in good faith resumed for five years, the
 30 right-of-way may revert as provided in this section to
 31 the person who, at the time of the abandonment or
 32 nonuse, is the owner of the tract from which such
 33 right-of-way was taken. For purposes of this section,
 34 a pipeline is not considered abandoned or unused if it
 35 is transporting product or is being actively
 36 maintained with reasonable anticipation of a future
 37 use.

38 2. To effect a reversion on nonuse of right-of-
 39 way, the owner or holder of purported fee title to
 40 such real estate shall serve notice upon the owner of
 41 such right-of-way easement and, if filed of record,
 42 successors in interest and upon any party in
 43 possession of the real estate. The written notice
 44 shall accurately describe the real estate and easement
 45 in question, set out the facts concerning ownership of
 46 the fee, ownership of the right-of-way easement, and
 47 the period of abandonment or nonuse, and notify the
 48 parties that such reversion shall be complete and
 49 final, and that the easement or other right shall be
 50 forfeited, unless the parties shall, within one

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1 hundred twenty days after the completed service of
2 notice, file an affidavit with the county recorder of
3 the county in which the real estate is located
4 disputing the facts contained in the notice.

5 3. The notice shall be served in the same manner
6 as an original notice under the Iowa rules of civil
7 procedure, except that when notice is served by
8 publication an affidavit shall not be required before
9 publication. If an affidavit disputing the facts
10 contained in the notice is not filed within one
11 hundred twenty days, the party serving the notice may
12 file for record in the office of the county recorder a
13 copy of the notice with proofs of service attached and
14 endorsed, and when so recorded, the record shall be
15 constructive notice to all persons of the abandonment,
16 reversion, and forfeiture of such right-of-way.

17 4. Upon reversion of the easement, the landowner
18 may require the pipeline company to remove any pipe or
19 pipeline facility remaining on the property.

20 5. If a pipeline right-of-way is abandoned for
21 pipeline use, but the pipe is not removed from the
22 right-of-way, the pipeline company shall remain
23 responsible for the additional costs of subsequent
24 tiling as provided for in section 479.47, shall mark
25 the location of the line in response to a notice of
26 proposed excavation in accordance with chapter 480,
27 and shall remain subject to the damage provisions of
28 this chapter in the event access to or excavation
29 relating to the pipe is required. The landowner shall
30 provide reasonable access to the pipeline in order to
31 carry out the responsibilities of this subsection.

32 Sec. 4. Section 479A.14, Code 1997, is amended to
33 read as follows:

34 479A.14 LAND RESTORATION -- STANDARDS --
35 INSPECTION.

36 1. The board shall adopt rules establishing
37 ~~standards to protect underground improvements during~~
38 ~~the construction of pipelines, to protect soil~~
39 ~~conservation and drainage structures from being~~
40 ~~permanently damaged by pipeline construction, and for~~
41 the restoration of agricultural lands during and after
42 pipeline construction. ~~To ensure that all interested~~
43 ~~persons are informed of this rulemaking procedure and~~
44 ~~are afforded a right to participate, the board shall~~
45 ~~schedule an opportunity for oral presentations on the~~
46 ~~proposed rulemaking and, in~~ In addition to the
47 requirements of section 17A.4, the board shall
48 distribute copies of the notice of intended action and
49 opportunity for oral presentations to each county
50 board of supervisors. A county board of supervisors

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1 may, under chapter 17A and subsequent to the
2 rulemaking proceedings, petition for additional
3 rulemaking to establish standards to protect soil
4 conservation practices, structures, and drainage
5 structures for land restoration after pipeline
6 construction within that county. Upon the request of
7 the petitioning county, the board shall schedule a
8 hearing to consider the merits of the petition. Rules
9 adopted under this section do not apply within the
10 boundaries of a city, unless the land is used for
11 agricultural purposes. Rules adopted under this
12 section shall not apply to land located within city
13 boundaries, unless the land is used for agricultural
14 purposes. Rules adopted under this section shall
15 address, but are not limited to, all of the following
16 subject matters:

- 17 a. Topsoil separation and replacement.
- 18 b. Temporary and permanent repair to drain tile.
- 19 c. Removal of rocks and debris from the right-of-
20 way.
- 21 d. Restoration of areas of soil compaction.
- 22 e. Restoration of terraces, waterways, and other
23 erosion control structures.
- 24 f. Revegetation of untilled land.
- 25 g. Future installation of drain tile or soil
26 conservation structures.
- 27 h. Restoration of land slope and contour.
- 28 i. Restoration of areas used for field entrances
29 and temporary roads.
- 30 j. Construction in wet conditions.
- 31 k. Designation of a pipeline company point of
32 contact for landowner inquiries or claims.

33 2. The county board of supervisors shall cause an
34 on-site inspection for compliance with the standards
35 adopted under this section to be performed at any
36 pipeline construction project in the county. A
37 licensed professional engineer familiar with the
38 standards adopted under this section and registered
39 under chapter 542B shall be placed in charge of the
40 inspection. The reasonable costs of the inspection
41 shall be borne by the pipeline company.

42 3. If the inspector determines that there has been
43 a violation of the standards adopted under this
44 section, of the land restoration plan, or of an
45 independent agreement on land restoration executed in
46 accordance with subsection 10, the inspector shall
47 give oral notice, followed by written notice, to the
48 pipeline company and the contractor operating for the
49 pipeline company, and order corrective action to be
50 taken in compliance with the standards. The costs of

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1 the corrective action shall be borne by the contractor
2 operating for the pipeline company.

3 ~~4--As-a-part-of-the-inspection-process,--the~~
4 ~~inspector-shall-ascertain-that-the-trench-excavation~~
5 ~~has-been-filled-in-a-manner-to-provide-that-the~~
6 ~~topsoil-has-been-replaced-on-top-and-rocks-and-debris~~
7 ~~have-been-removed-from-the-topsoil-of-the-easement~~
8 ~~area.--An-existing-topsoil-layer-extending-at-least~~
9 ~~one-foot-in-width-on-either-side-of-the-pipeline~~
10 ~~excavation-at-a-maximum-depth-of-one-foot-shall-be~~
11 ~~removed-separately-and-shall-be-stockpiled-and~~
12 ~~preserved-separately-during-subsequent-construction~~
13 ~~operations,--unless-other-means-for-separating-the~~
14 ~~topsoil-are-provided-in-the-easement.--The-topsoil~~
15 ~~shall-be-replaced-so-the-upper-portion-of-the-pipeline~~
16 ~~excavation-and-the-crowned-surface-contain-only-the~~
17 ~~topsoil-originally-removed.~~

18 5- 4. Adequate inspection of The inspector shall
19 adequately inspect underground improvements altered
20 during construction of a pipeline. The inspection
21 shall be conducted at the time of the replacement or
22 repair of the underground improvements. An The
23 inspector shall be present on the site at all times at
24 each phase and separate activity of the opening of the
25 trench, the restoration of underground improvements,
26 and backfilling. The pipeline company and its
27 contractor shall keep all county inspectors
28 continually informed of the work schedule and any
29 schedule changes. If proper notice is given,
30 construction shall not be delayed due to the
31 inspector's failure to be present on the site.

32 6- 5. If the pipeline company or its contractor
33 does not comply with the orders of the inspector for
34 compliance with the standards, with the land
35 restoration plan, or with an independent agreement on
36 land restoration executed in accordance with
37 subsection 10, the county board of supervisors may
38 direct-the-county-attorney-to-petition-the-district
39 court petition the board for an order requiring
40 corrective action to be taken in compliance with the
41 standards adopted under this section. In addition,
42 the county board of supervisors may file a complaint
43 with the board seeking imposition of civil penalties
44 pursuant to section 479A.16.

45 7- 6. The pipeline company shall allow landowners
46 and inspectors to view the proposed center line of the
47 pipeline before commencing trenching operations to
48 ensure that construction takes place in the proper
49 location.

50 8- 7. An inspector may temporarily halt the

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1 construction if the construction is not in compliance
2 with this chapter and the standards adopted under it
3 this chapter, the land restoration plan approved by
4 the board, or the terms of the an independent
5 agreement with the pipeline company regarding topsoil
6 removal-and-replacement,-drainage-structures,-soil
7 moisture-conditions,-or-the-location-of-construction,
8 line location or land restoration executed in
9 accordance with subsection 10, until the inspector
10 consults with the supervisory personnel of the
11 pipeline company. If-the-construction-is-continued
12 over-the-inspector's-objection-and-is-found-not-to-be
13 in-compliance-with-this-chapter,-the-standards,-or-the
14 agreement,-and-is-found-to-cause-damage,-a-civil
15 penalty-recovered-under-section-479A:16-as-a-result-of
16 that-violation-shall-be-paid-to-the-landowner.

17 9- 8. The board shall instruct inspectors
18 appointed by the county board of supervisors regarding
19 the content of this chapter and the standards and the
20 inspectors' responsibility to require construction
21 conforming with them.

22 10- 9. An-underground-drain-tile-damaged,-cut,-or
23 removed-shall-be-temporarily-repaired-and-maintained
24 as-necessary-to-allow-for-its-proper-function-during
25 construction-of-the-pipeline.--If-temporary-repair-is
26 determined-not-to-be-necessary,-the-exposed-line-shall
27 be-screened-or-otherwise-protected-to-prevent-the
28 entry-of-foreign-material-or-small-animals-into-the
29 tile-line-system. Prior to the initiation of
30 construction, the pipeline company shall file a
31 written land restoration plan with the board
32 describing the methods and procedures by which
33 compliance with this section and the standards adopted
34 under this section will be achieved. The board shall
35 review this plan to insure that the requirements of
36 this section and rules adopted pursuant to this
37 section are met. After board review, the pipeline
38 company shall provide copies of the plan to all
39 landowners of property that will be disturbed by the
40 construction.

41 11- 10. This section does not preclude the
42 application of provisions for protecting or restoring
43 property that are different than those prescribed in
44 this section, in rules adopted pursuant to this
45 section, or in the land restoration plan if the
46 alternative provisions are contained in agreements
47 independently executed by the pipeline company and the
48 landowner, and if the alternative provisions are not
49 inconsistent with state law or with rules adopted by
50 the board. Independent agreements on land restoration

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1 or line location between the landowner and pipeline
2 company shall be in writing and a copy provided to the
3 county inspector.

4 11. For the purposes of this section,
5 "construction" includes the removal of a previously
6 constructed pipeline.

7 12. The requirements of this section shall not
8 apply to pipeline projects that have received a
9 certificate from the federal energy regulatory
10 commission prior to the effective date of this Act.

11 Sec. 5. Section 479A.24, subsections 1 and 2, Code
12 1997, are amended to read as follows:

13 1. Compensable losses shall include, but are not
14 limited to, all of the following:

15 a. Loss or reduced yield of crops or forage on the
16 pipeline right-of-way, whether caused directly by
17 construction or from disturbance of usual farm
18 operations.

19 b. Loss or reduced yield of crops or yield from
20 land near the pipeline right-of-way resulting from
21 lack of timely access to the land or other disturbance
22 of usual farm operations, including interference with
23 irrigation.

24 c. Fertilizer, lime, or organic material applied
25 by the landowner to restore land disturbed by
26 construction to full productivity.

27 d. Loss of or damage to trees of commercial or
28 other value that occurs at the time of construction or
29 at the time of any subsequent work by the pipeline
30 outside of the area cleared during construction.

31 ~~e. The cost of moving or relocating livestock,~~
32 ~~and the loss of gain by, or the death or injury of~~
33 ~~livestock caused by the interruption or relocation of~~
34 ~~normal feeding of-the-livestock-due-to-the~~
35 ~~construction-or-repair-of-a-pipeline-is-a-compensable~~
36 ~~loss-and-shall-be-so-recognized-by-a-pipeline-company.~~

37 f. Erosion on lands caused by construction.

38 g. Damage to farm equipment caused by striking a
39 pipeline while engaged in normal farming operations as
40 defined in section 480.1.

41 2. A claim for damage for future crop deficiency
42 within the easement strip shall not be precluded from
43 renegotiation under section 6B.52 on the grounds that
44 it was apparent at the time of settlement unless the
45 settlement expressly releases the pipeline company
46 from claims for damage to the productivity of the
47 soil. The landowner shall notify the company in
48 writing thirty days prior to harvest in each year to
49 assess crop deficiency.

50 Sec. 6. NEW SECTION. 479A.27 REVERSION ON

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1 NONUSE.

2 1. If a pipeline right-of-way, or any part of a
 3 pipeline right-of-way, is wholly abandoned for
 4 pipeline purposes by the relocation of the pipeline,
 5 is not used or operated for a period of five
 6 consecutive years, or if the construction of the
 7 pipeline has been commenced and work has ceased and
 8 has not in good faith resumed for five years, the
 9 right-of-way may revert as provided in this section to
 10 the person who, at the time of the abandonment or
 11 nonuse, is the owner of the tract from which such
 12 right-of-way was taken. Abandonment of pipeline
 13 facilities requires approval from the federal energy
 14 regulatory commission prior to this provision taking
 15 effect.

16 2. To effect a reversion on nonuse of right-of-
 17 way, the owner or holder of purported fee title to
 18 such real estate shall serve notice upon the owner of
 19 such right-of-way easement and, if filed of record,
 20 successors in interest and upon any party in
 21 possession of the real estate. The written notice
 22 shall accurately describe the real estate and easement
 23 in question, set out the facts concerning ownership of
 24 the fee, ownership of the right-of-way easement, and
 25 the period of abandonment or nonuse, and notify the
 26 parties that such reversion shall be complete and
 27 final, and that the easement or other right shall be
 28 forfeited, unless the parties shall, within one
 29 hundred twenty days after the completed service of
 30 notice, file an affidavit with the county recorder of
 31 the county in which the real estate is located
 32 disputing the facts contained in the notice.

33 3. The notice shall be served in the same manner
 34 as an original notice under the Iowa rules of civil
 35 procedure, except that when notice is served by
 36 publication an affidavit shall not be required before
 37 publication. If an affidavit disputing the facts
 38 contained in the notice is not filed within one
 39 hundred twenty days, the party serving the notice may
 40 file for record in the office of the county recorder a
 41 copy of the notice with proofs of service attached and
 42 endorsed, and when so recorded, the record shall be
 43 constructive notice to all persons of the abandonment,
 44 reversion, and forfeiture of such right-of-way.

45 4. Upon reversion of the easement, the landowner
 46 may require the pipeline company to remove any pipe or
 47 pipeline facility remaining on the property to the
 48 extent such removal is in accordance with the terms of
 49 the abandonment authority from the federal energy
 50 regulatory commission.

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30 regulatory commission
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1 5. If a pipeline right-of-way is abandoned for
2 pipeline use, but the pipe is not removed from the
3 right-of-way, the pipeline company shall remain
4 responsible for the additional costs of subsequent
5 tiling as provided for in section 479A.26, shall mark
6 the location of the line in response to a notice of
7 proposed excavation in accordance with chapter 480,
8 and shall remain subject to the damage provisions of
9 this chapter in the event access to or excavation
10 relating to the pipe is required. The landowner shall
11 provide reasonable access to the pipeline in order to
12 carry out the responsibilities of this subsection.

13 Sec. 7. Section 479B.20, Code 1997, is amended to
14 read as follows:

15 479B.20 LAND RESTORATION STANDARDS.

16 1. The board, pursuant to chapter 17A, shall adopt
17 rules establishing standards for the-protection-of
18 underground-improvements-during-the-construction-of
19 pipelines-or-underground-storage-facilities,-to
20 protect-soil-conservation-and-drainage-structures-from
21 being-permanently-damaged-by-construction-of-the
22 pipeline-or-underground-storage-facility,-and-for the
23 restoration of agricultural lands during and after
24 pipeline or underground storage facility construction.
25 ~~To ensure that all interested persons are informed of~~
26 ~~this rulemaking procedure and are afforded a right to~~
27 ~~participate, the board shall schedule an opportunity~~
28 ~~for oral presentations on the proposed rulemaking,~~
29 ~~and, in~~ In addition to the requirements of section
30 17A.4, the board shall distribute copies of the notice
31 of intended action and opportunity for oral
32 presentations to each county board of supervisors.
33 Any county board of supervisors may, under the
34 provisions of chapter 17A, and subsequent to the
35 rulemaking proceedings, petition under those
36 provisions for additional rulemaking to establish
37 standards ~~to protect soil conservation practices,~~
38 ~~structures, and drainage structures for land~~
39 restoration after pipeline construction within that
40 county. Upon the request of the petitioning county,
41 the board shall schedule a hearing to consider the
42 merits of the petition. Rules adopted under this
43 section shall not apply within the boundaries of a
44 city unless the land is used for agricultural
45 purposes. Rules adopted under this section shall not
46 apply to land located within city boundaries, unless
47 the land is used for agricultural purposes. Rules
48 adopted under this section shall address, but are not
49 limited to, all of the following subject matters:

50 a. Topsoil separation and replacement.

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- 1 b. Temporary and permanent repair to drain tile.
 2 c. Removal of rocks and debris from the right-of-
 3 way.
 4 d. Restoration of areas of soil compaction.
 5 e. Restoration of terraces, waterways, and other
 6 erosion control structures.
 7 f. Revegetation of untilled land.
 8 g. Future installation of drain tile or soil
 9 conservation structures.
 10 h. Restoration of land slope and contour.
 11 i. Restoration of areas used for field entrances
 12 and temporary roads.
 13 j. Construction in wet conditions.
 14 k. Designation of a pipeline company point of
 15 contact for landowner inquiries or claims.

16 2. The county board of supervisors shall cause an
 17 on-site inspection for compliance with the standards
 18 adopted under this section to be performed at any
 19 pipeline construction project in the county. A
 20 licensed professional engineer familiar with the
 21 standards adopted under this section and registered
 22 under chapter 542B shall be responsible for the
 23 inspection. A county board of supervisors may
 24 contract for the services of a licensed professional
 25 engineer for the purposes of the inspection. The
 26 reasonable costs of the inspection shall be paid by
 27 the pipeline company.

28 3. If the inspector determines that there has been
 29 a violation of the standards adopted under this
 30 section, of the land restoration plan, or of an
 31 independent agreement on land restoration executed in
 32 accordance with subsection 10, the inspector shall
 33 give oral notice, followed by written notice, to the
 34 pipeline company and the contractor operating for the
 35 pipeline company and order corrective action to be
 36 taken in compliance with the standards. The costs of
 37 the corrective action shall be borne by the contractor
 38 operating for the pipeline company.

39 ~~4. As a part of the inspection process, the~~
 40 ~~inspector shall ascertain that the trench excavation~~
 41 ~~has been filled in a manner to provide that the~~
 42 ~~topsoil has been replaced on top and rocks and debris~~
 43 ~~have been removed from the topsoil of the easement~~
 44 ~~area. An existing topsoil layer extending at least~~
 45 ~~one foot in width on either side of the pipeline~~
 46 ~~excavation at a maximum depth of twelve inches shall~~
 47 ~~be removed separately and shall be stockpiled and~~
 48 ~~preserved separately during subsequent construction~~
 49 ~~operations, unless other means for separating the~~
 50 ~~topsoil are provided in the easement. The topsoil~~

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1 shall-be-replaced-so-the-upper-portion-of-the-pipeline
2 excavation-and-the-crowned-surface-shall-contain-only
3 the-topsoil-originally-removed.

4 5- 4. Adequate-inspection-of The inspector shall
5 adequately inspect underground improvements altered
6 during construction of the pipeline. The inspection
7 shall be conducted at the time of the replacement or
8 repair of the underground improvements. An The
9 inspector shall be present on the site at all times at
10 each phase and separate activity of the opening of the
11 trench, the restoration of underground improvements,
12 and backfilling. The pipeline company and its
13 contractor shall keep all county inspectors
14 continually informed of the work schedule and any
15 schedule changes. If proper notice is given,
16 construction shall not be delayed due to the
17 inspector's failure to be present on the site.

18 6- 5. If the pipeline company or its contractor
19 does not comply with the orders of the inspector for
20 compliance with the standards, with the land
21 restoration plan, or with an independent agreement on
22 land restoration executed in accordance with
23 subsection 10, the county board of supervisors may
24 direct-the-county-attorney-to-petition-the-district
25 court petition the board for an order requiring
26 corrective action to be taken in compliance with the
27 standards adopted under this section. In addition,
28 the county board of supervisors may file a complaint
29 with the board seeking imposition of civil penalties
30 under section 479B.21.

31 7- 6. The pipeline company shall allow landowners
32 and inspectors to view the proposed center line of the
33 pipeline prior to commencing trenching operations to
34 ensure that construction takes place in its proper
35 location.

36 8- 7. An inspector may temporarily halt the
37 construction if the construction is not in compliance
38 with the law and the standards adopted pursuant to
39 law, the land restoration plan, or the terms of the an
40 independent agreement with the pipeline company
41 regarding topsoil-removal-and-replacement,-drainage
42 structures,-soil-moisture-conditions,-or-the-location
43 of-construction line location or land restoration
44 executed in accordance with subsection 10, until the
45 inspector consults with the supervisory personnel of
46 the pipeline company. If-the-construction-is-then
47 continued-over-the-inspector's-objection-and-is-found
48 not-to-be-in-compliance-with-the-law-or-agreement-and
49 is-found-to-cause-damage,-any-civil-penalty-recovered
50 under-section-479B.21-as-a-result-of-that-violation

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~~1 shall be paid to the landowner.~~

2 ~~9:~~ 8. The board shall instruct inspectors
3 appointed by the board of supervisors regarding the
4 content of the statutes and rules and the inspector's
5 responsibility to require construction conforming with
6 the standards provided by this chapter.

7 ~~10:~~ 9. ~~Any underground drain tile damaged, cut, or~~
8 ~~removed shall be temporarily repaired and maintained~~
9 ~~as necessary to allow for its proper function during~~
10 ~~construction of the pipeline or underground storage~~
11 ~~facility. -- If temporary repair is not determined to be~~
12 ~~necessary, the exposed tile shall nonetheless be~~
13 ~~screened or otherwise protected to prevent the entry~~
14 ~~of any foreign material or small animals into the tile~~
15 ~~line system.~~ Petitioners for a permit for pipeline
16 construction shall file with the petition a written
17 land restoration plan showing how the requirements of
18 this section, and of rules adopted pursuant to this
19 section, will be met. The company shall provide
20 copies of the plan to all landowners of property that
21 will be disturbed by the construction.

22 ~~11:~~ 10. This section does not preclude the
23 application of provisions for protecting or restoring
24 property that are different than those prescribed in
25 this section, in rules adopted under this section, or
26 in the land restoration plan, if the alternative
27 provisions are contained in agreements independently
28 executed by the pipeline company and the landowner,
29 and if the alternative provisions are not inconsistent
30 with state law or with rules adopted by the board.
31 Independent agreements on land restoration or line
32 location between the landowner and pipeline company
33 shall be in writing and a copy provided to the county
34 inspector.

35 11. For the purposes of this section,
36 "construction" includes the removal of a previously
37 constructed pipeline.

38 12. The requirements of this section shall apply
39 only to pipeline construction projects commenced on or
40 after June 1, 1998.

41 Sec. 8. Section 479B.29, subsection 1, Code 1997,
42 is amended to read as follows:

43 1. Compensable losses shall include, but are not
44 limited to, all of the following:

45 a. Loss or reduced yield of crops or forage on the
46 pipeline right-of-way, whether caused directly by
47 construction or from disturbance of usual farm
48 operations.

49 b. Loss or reduced yield of crops or yield from
50 land near the pipeline right-of-way resulting from

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1 lack of timely access to the land or other disturbance
2 of usual farm operations, including interference with
3 irrigation.

4 c. Fertilizer, lime, or organic material applied
5 by the landowner to restore land disturbed by
6 construction to full productivity.

7 d. Loss of or damage to trees of commercial or
8 other value that occurs at the time of construction or
9 at the time of any subsequent work by the pipeline
10 outside of the area cleared during construction.

11 e. The cost of moving or relocating livestock,
12 and the loss of gain by or the death or injury of
13 livestock caused by the interruption or relocation of
14 normal feeding of-the-livestock-caused-by-the
15 construction-or-repair-of-a-pipeline-or-underground
16 storage-facility-is-a-compensable-loss-and-shall-be
17 recognized-by-a-pipeline-company.

18 f. Erosion on lands caused by construction.

19 g. Damage to farm equipment caused by striking a
20 pipeline while engaged in normal farming operations as
21 defined in section 480.1.

22 Sec. 9. NEW SECTION. 479B.32 REVERSION ON
23 NONUSE.

24 1. If a pipeline right-of-way, or any part of the
25 pipeline right-of-way, is wholly abandoned for
26 pipeline purposes by the relocation of the line, is
27 not used or operated for a period of five consecutive
28 years, or if the construction of the pipeline has been
29 commenced and work has ceased and has not in good
30 faith resumed for five years, the right-of-way may
31 revert as provided in this section to the person who,
32 at the time of the abandonment or nonuse, is the owner
33 of the tract from which such right-of-way was taken.
34 For purposes of this section, a pipeline is not
35 considered abandoned or unused if it is transporting
36 product or is being actively maintained with
37 reasonable anticipation of a future use.

38 2. To effect a reversion on nonuse of right-of-
39 way, the owner or holder of purported fee title to
40 such real estate shall serve notice upon the owner of
41 such right-of-way easement and, if filed of record,
42 successors in interest and upon any party in
43 possession of the real estate. The written notice
44 shall accurately describe the real estate and easement
45 in question, set out the facts concerning ownership of
46 the fee, ownership of the right-of-way easement, and
47 the period of abandonment or nonuse, and notify the
48 parties that such reversion shall be complete and
49 final, and that the easement or other right shall be
50 forfeited, unless the parties shall, within one

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1 hundred twenty days after the completed service of
2 notice, file an affidavit with the county recorder of
3 the county in which the real estate is located
4 disputing the facts contained in the notice.

5 3. The notice shall be served in the same manner
6 as an original notice under the Iowa rules of civil
7 procedure, except that when notice is served by
8 publication an affidavit shall not be required before
9 publication. If an affidavit disputing the facts

10 contained in the notice is not filed within one
11 hundred twenty days, the party serving the notice may
12 file for record in the office of the county recorder a
13 copy of the notice with proofs of service attached and
14 endorsed, and when so recorded, the record shall be
15 constructive notice to all persons of the abandonment,
16 reversion, and forfeiture of such right-of-way.

17 4. Upon reversion of the easement, the landowner
18 may require the pipeline company to remove any pipe or
19 pipeline facility remaining on the property.

20 5. If a pipeline right-of-way is abandoned for
21 pipeline use, but the pipe is not removed from the
22 right-of-way, the pipeline company shall remain
23 responsible for the additional costs of subsequent
24 tiling as provided for in section 479B.31, shall mark
25 the location of the line in response to a notice of
26 proposed excavation in accordance with chapter 480,
27 and shall remain subject to the damage provisions of
28 this chapter in the event access to or excavation
29 relating to the pipe is required. The landowner shall
30 provide reasonable access to the pipeline in order to
31 carry out the responsibilities of this subsection.

32 Sec. 10. EFFECTIVE DATE. This Act takes effect on
33 June 1, 1998."

34 2. Title page, lines 1 and 2, by striking the
35 words "security for damages arising from the
36 abandonment of natural gas".

37 3. Title page, line 2, by inserting after the
38 word "pipelines" the following: ", the restoration of
39 agricultural lands, making penalties applicable, and
40 providing an effective date".

By KITTY REHBERG

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WITHDRAWN
3/11/98 (p. 630)

proofs of its solvency and financial ability to pay that amount of damages.

SENATE FILE 2201

AN ACT
RELATING TO SECURITY FOR DAMAGES ARISING FROM THE ABANDON-
MENT OF NATURAL GAS PIPELINES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 479A.12, Code 1997, is amended to read as follows:

479A.12 FINANCIAL CONDITION OF COMPANY -- BOND OR OTHER SECURITY.

Before construction is begun by a pipeline company, the company shall satisfy the board that the company has property subject to execution within this state other than pipelines, of a value in excess of two hundred fifty thousand dollars, or the company must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the company will pay any and all damages legally recovered against it growing out of the construction, abandonment, or operation of its pipeline and underground storage facilities in this state, or the company shall deposit with the board security satisfactory to the board as a guaranty for the payment of that amount of damages, or furnish to the board satisfactory

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2201, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved April 15, 1998

TERRY E. BRANSTAD
Governor