

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

HOUSE VETERANS AFFAIRS &
EMERGENCY PREPAREDNESS COMMITTEE

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HARRISBURG, PA

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ROOM G-50

WEDNESDAY, AUGUST 21, 2019
9:33 A.M.

PRESENTATION ON
HOUSE BILL 1568
ESTABLISHING A PIPELINE SAFETY AND COMMUNICATION BOARD

BEFORE:

HONORABLE STEPHEN BARRAR, MAJORITY CHAIRMAN
HONORABLE STEPHANIE BOROWICZ
HONORABLE TORREN ECKER
HONORABLE MATT GABLER
HONORABLE MARK M. GILLEN
HONORABLE TODD POLINCHOCK
HONORABLE JIM RIGBY
HONORABLE FRANCIS XAVIER RYAN
HONORABLE CHRIS SAINATO, DEMOCRATIC CHAIRMAN
HONORABLE CAROL HILL-EVANS
HONORABLE JENNIFER O'MARA
HONORABLE CHRISTINA SAPPEY
HONORABLE JOE WEBSTER

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*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

ALSO PRESENT:

REPRESENTATIVE CAROLYN COMITTA
REPRESENTATIVE CHRIS QUINN

COMMITTEE STAFF PRESENT:

RICK O'LEARY
MAJORITY EXECUTIVE DIRECTOR
SEAN HARRIS
MAJORITY RESEARCH ANALYST
LU ANN FAHNDRICH
MAJORITY ADMINISTRATIVE ASSISTANT

MIKE HILLMAN
DEMOCRATIC EXECUTIVE DIRECTOR
HARRY BUCHER
DEMOCRATIC RESEARCH ANALYST
HALEN SAV
DEMOCRATIC RESEARCH ANALYST

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SUBMITTED WRITTEN TESTIMONY

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P R O C E E D I N G S

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MAJORITY CHAIRMAN BARRAR: Good morning, everyone. I will now call this public hearing to order. I would ask everyone in the room if they would please silence their cell phone. Okay.

I would ask that for the Pledge of Allegiance, if Representative Borowicz would lead us in the Pledge of Allegiance.

(The Pledge of Allegiance was recited.)

MAJORITY CHAIRMAN BARRAR: Okay. Good. Good morning. My name is Steve Barrar, and I'm the Majority Chairman of the House Veteran Affairs and Emergency Preparedness Committee.

We are here today to examine House Bill 1568, which is co-prime sponsored by Representative Carolyn Comitta and Representative Chris Quinn. This legislation would establish the Pipeline Safety and Communication Board. And today's proceedings follow on a hearing we conducted this past spring on pipeline safety and emergency response planning.

I look forward to hearing presentations from various entities today, and I thank everyone here for their

1 attendance.

2 Chairman Sainato?

3 DEMOCRATIC CHAIRMAN SAINATO: Thank you, Chairman
4 Barrar.

5 I, too, thank everyone for coming. We've got a
6 nice mix of Members from around the State. I think that
7 shows the interest, and I'm looking forward to hearing some
8 testimony today.

9 I think we've had a very productive week
10 yesterday dealing with an issue, and we heard various views
11 from different groups. And we want to hear the same thing
12 today. We want to know what's going on out there, and we
13 want to know what is in the best interest of our
14 Commonwealth. So I look forward to the testimony.

15 MAJORITY CHAIRMAN BARRAR: Great, thank you,
16 Mr. Chairman.

17 I would now ask the Committee Members and staff
18 to introduce themselves to the audience.

19 REPRESENTATIVE GILLEN: Representative Mark
20 Gillen, Berks, Lancaster Counties.

21 REPRESENTATIVE WEBSTER: Good morning. Joe
22 Webster, House District 150 in Montgomery County.

23 REPRESENTATIVE O'MARA: Good morning.
24 Representative Jennifer O'Mara, House District 165,
25 Delaware County.

1 REPRESENTATIVE QUINN: Good morning. State
2 Representative Chris Quinn, 168th, Delaware County.

3 REPRESENTATIVE COMITTA: Good morning. Carolyn
4 Comitta. I represent the people of West Chester in the
5 156th, Chester County.

6 REPRESENTATIVE RIGBY: Good morning. Jim Rigby,
7 71st District, Cambria, Somerset Counties.

8 REPRESENTATIVE ECKER: Good morning. Torren
9 Ecker. I represent Adams and Cumberland County, 193rd
10 District.

11 REPRESENTATIVE POLINCHOCK: Good morning. Todd
12 Polinchock, the 144th District from central Bucks County.

13 REPRESENTATIVE GABLER: Good morning. Matt
14 Gabler, 75th Legislative District, Elk and Clearfield
15 Counties.

16 MR. HARRIS: Sean Harris, Research Analyst for
17 the Committee.

18 MR. O'LEARY: Rick O'Leary, Executive Director
19 for Chairman Barrar.

20 MR. HILLMAN: Mike Hillman, Democratic Executive
21 Director for the Committee.

22 REPRESENTATIVE BOROWICZ: Stephanie Borowicz. I
23 represent the 76th District, Clinton and part of Centre
24 County.

25 MAJORITY CHAIRMAN BARRAR: Thank you, everyone.

1 At this time, I will call on Representative
2 Carolyn Comitta and Representative Chris Quinn for short
3 remarks as they have authored this piece of legislation
4 that we're looking at today. Thank you. Either one of
5 you.

6 REPRESENTATIVE COMITTA: Thank you very much,
7 Chairman Barrar. And also thank you to Chairman Sainato
8 for holding this hearing on House Bill 1568. And I also
9 thank my colleague, Representative Chris Quinn, for being
10 co-prime sponsor with me. I also thank everyone who will
11 be testifying today and everyone who is here to participate
12 in the hearing.

13 I'd like to share a little bit of background on
14 the need and value of this bill. The Marcellus Shale
15 formation is now the largest source of natural gas in the
16 United States. Mariner East 1 and 2 and 2X go through my
17 district in Chester County. There are 11 pipelines that
18 run through East Goshen Township in my district alone. In
19 both Chester and Delaware Counties, these pipelines run
20 through heavily populated suburban areas, including
21 adjacent to homes, schools, and senior care facilities.
22 Emergency response plans would, of necessity, be very
23 complex.

24 Understandably, there have been many safety
25 concerns expressed by residents and municipalities and

1 businesses alike. Almost weekly we hear of another
2 explosion, a contamination, a leak, or another pipeline
3 incident somewhere in the country. Communication is the
4 key at all levels of these pipeline projects but are
5 particularly crucial, as we saw when an incident occurred
6 recently in West Goshen Township in my district.

7 Our State agencies must hold the safety and well-
8 being of the Commonwealth citizens foremost. It's very
9 important that those living and working in pipeline-
10 affected areas have timely, accurate, and actionable
11 information which currently often does not pass readily
12 from State to county to local municipality. Our residents
13 deserve to feel safe and to be safe.

14 The chronic stress that I have observed
15 individuals and families caused by ongoing questions and
16 concerns around the Mariner project in particular is a
17 public health concern in itself and a stress that I believe
18 could be reduced with more effective communication.

19 In facilitating meetings with local officials,
20 State agencies, emergency services, and the natural gas
21 industry, in particular energy transfer, which is building
22 the Mariner pipeline, to discuss pipeline issues and
23 communication, I realized how limited substantive
24 communication has been. Municipalities and county
25 emergency services have found it particularly frustrating.

1 As a result, there is often the perpetuation of
2 misinformation or misunderstandings by the public who feel
3 they are not getting the full story.

4 As a solution, I'm proposing the creation of a
5 Pipeline Safety and Communication Board that would be
6 responsible for considering the overarching issue of public
7 safety and for implementing and coordinating the timely
8 communication of information regarding pipeline activities
9 in the Commonwealth. In my proposed bill, the board would
10 provide for the collection and dissemination of information
11 and appropriate public safety measures relative to the
12 planning, siting, construction, operation, maintenance,
13 management, inspection, and safety of emergency response
14 procedures for pipelines. In addition, the board would be
15 responsible for coordinating communications relating to
16 pipeline activities with Federal, State, and local
17 government agencies with regulatory authorities, pipeline
18 companies, and, most importantly, the public.

19 The board would be composed of State officials
20 from the PUC, the DEP, the Department of Health, PennDOT,
21 PEMA, State Fire Commissioner, majority and minority
22 leaders of the House and Senate, and owners and operators
23 of interstate or intrastate pipelines located or under
24 construction in the Commonwealth.

25 I shared my idea with some of the State agencies

1 who thought the concept was a good one. However, some had
2 some concerns about sharing or discussing sensitive public
3 safety information as per Act 156 of 2006, the Public
4 Utility Confidential Security Information Disclosure
5 Protection Act.

6 I researched the legislative history of the
7 Confidentiality Act and spoke with staff and lobbyists who
8 were around at that time. I learned that there is a lack
9 of consensus on how the act is interpreted. The purpose of
10 this post-9/11 act was to protect confidential security
11 information against terrorist attacks. The act establishes
12 a document trading system with a public track and a secure
13 track. My understanding is the only way an agency
14 representative could be held accountable and go to jail
15 would be if he or she knowingly and maliciously released
16 secure information.

17 However, it seems that we must gain consensus on
18 the interpretation of Act 156 and remedy any perception
19 that there are obstacles to pertinent agencies
20 communicating and working together effectively to address
21 the issues of pipeline safety. It may be that what is
22 needed is carefully considered amendments to Act 156 such
23 as Senator Killion's Senate Bill 284, which would provide
24 for pipeline operation and emergency response plans and
25 also perhaps modifications and amendments to my proposed

1 legislation.

2 I want to thank you, each of you, for your
3 thoughtful consideration of pipeline safety across
4 Pennsylvania and the importance of effective communication
5 in the pursuit of public safety. We look forward to
6 hearing the expert testimony presented to the Committee
7 today to help us choose the best path forward. Thank you
8 very much.

9 REPRESENTATIVE QUINN: Thank you, Carolyn. Good
10 morning. I would like to sincerely thank Chairman Barrar
11 for hosting this Committee, as well as Chairman Sainato. I
12 also want to thank my colleague Carolyn Comitta for all of
13 her work on pipeline safety and security.

14 The last time this Committee came together on a
15 similar topic was about two months ago back in my district
16 at Delaware County Community College. And this is at least
17 the fifth hearing that we've held on pipeline-related
18 issues. My first hearing was almost three years ago. It
19 was at the beginning of my tenure as a State
20 Representative, and I remember that hearing well. A lot of
21 important issues came to light that day.

22 My top priority has been safety and ensuring that
23 all residents can work, live, and go to school with peace
24 of mind that they are not in imminent danger due to any
25 pipeline-related issues. With that in mind, H.B. 1568

1 establishes a nonpaid Pipeline Safety and Communication
2 Board to oversee oil, gas, and non-gas-related activities.
3 The board would be responsible for collecting and
4 disseminating information to regulatory authorities.

5 We cannot afford to simply be reactionary to
6 situations. I've been working in close concert with my
7 colleagues on both sides of the aisle on pipeline-related
8 issues, and I believe we need to move at least a few pieces
9 of legislation forward. We must keep the welfare of our
10 neighbors and our children at the forefront of our hearing
11 today. And it's my hope that we can make public safety
12 paramount.

13 Once again, I want to thank Chairman Barrar and
14 Chairman Sainato for holding this hearing, and I want to
15 thank all of our testifiers and I want to thank my
16 colleague Carolyn Comitta. Thank you.

17 MAJORITY CHAIRMAN BARRAR: Thank you,
18 Representative.

19 We've been joined with other Representatives
20 since we did the introductions, Representative Carol Hill-
21 Evans, Representative Sappey, and also Representative Ryan,
22 who was probably out walking across the State somewhere.
23 So we appreciate having you here. Thank you.

24 REPRESENTATIVE RYAN: Twenty-eight hundred more
25 miles to go, Mr. Chairman, but we almost got there.

1 MAJORITY CHAIRMAN BARRAR: Thank you. At this
2 time I will call up our first panel. Mr. Seth Meddleson --
3 did I say it right?

4 MR. MENDELSON: Mendelsohn.

5 MAJORITY CHAIRMAN BARRAR: Mendelsohn, okay,
6 Executive Director, PUC, thank you for being here. Mr.
7 Paul Metro, Manager Safety Director, PUC; and Mr. Robert
8 Young, Deputy Chief Counsel with the PUC. Gentlemen, thank
9 you for being here today, and you can begin your testimony
10 when you're ready.

11 MR. MENDELSON: Thank you. Good morning. Thank
12 you, Chairman Barrar, Chairman Sainato, other Members of
13 the Committee, and all others gathered here with us this
14 morning. I am Seth Mendelsohn. I serve as the Executive
15 Director of the Public Utility Commission. Joining me
16 today are PUC Deputy Chief Counsel Robert Young, along with
17 Paul Metro, Manager of the Safety Division of the PUC's
18 independent Bureau of Investigation and Enforcement. It is
19 our pleasure to join with you today to testify on behalf of
20 the Commission and our dedicated staff concerning House
21 Bill 1568.

22 We appreciate the stated purpose of the
23 legislation to address concerns of residents and municipal
24 officials who live in close proximity of the construction
25 of pipelines and are unaware of the impact nearby pipelines

1 will have on their lives.

2 As detailed in the co-sponsorship memo, the
3 Pipeline Safety and Communication Board Act, or the act,
4 would establish an independent administrative board
5 empowered to, one, collect and disseminate to the public
6 information of Commonwealth agencies relative to the
7 planning, siting, construction, operation, maintenance,
8 management, inspection, and safety of emergency response
9 procedures for pipelines; and two, coordinate
10 communications relating to pipeline activities with
11 Federal, State, and local government agencies and
12 regulatory authorities, pipeline companies, and the public.

13 As mentioned, the Pipeline Safety and
14 Communication Board would be comprised of 22 members,
15 including the Chairperson of the Public Utility Commission.
16 And the act requires Commonwealth agencies to cooperate in
17 providing pipeline information upon request to the board.

18 The goals noted in proposing this legislation are
19 laudable, including greater transparency regarding pipeline
20 planning; construction maintenance, inspection, and safety,
21 and emergency response procedures; enhanced interagency
22 cooperation and communication in communicating pipeline
23 activities; and extended dialogue between State officials,
24 legislative Representatives, and interstate and intrastate
25 pipeline owners and operators to ensure that all public and

1 private stakeholders, including the general public, are
2 well-informed of potential issues.

3 Notwithstanding the very important goals of this
4 proposal, the PUC has several major concerns about the
5 legislation as written, which we will detail in this
6 testimony, and the Commission currently opposes the
7 legislation unless amended to address the two most serious
8 concerns we will highlight today, including the importance
9 of maintaining Pennsylvania's Confidential Security
10 Information, CSI, Disclosure Protection Act; and
11 clarification of responsibilities and procedures related to
12 Pennsylvania's Right to Know Law or RTK law.

13 First, the CSI Act concerns: As it currently
14 stands, House Bill 1568 repeals Pennsylvania's CSI Act
15 without identifying a plan to replace it. This repeal
16 enables agencies to provide CSI information to the board,
17 but there is no provision suggesting that the CSI Act will
18 be replaced with a new mechanism to provide some degree of
19 protection for CSI.

20 CSI is information provided by a public utility
21 that, if disclosed, would compromise security against
22 sabotage or criminal or terroristic acts, and the
23 nondisclosure of which is necessary for the protection of
24 life, safety, public property, or public utility
25 facilities. It is important to note that the CSI Act

1 covers not only public utility pipelines but also electric
2 utilities, natural gas utilities, telecommunications
3 utilities, and water/wastewater utilities.

4 Repeal of the CSI Act means that protections
5 would not be available for electric distribution
6 transmission maps and lines, substations, transformers, and
7 other critical elements of the electric grid; natural gas
8 distribution maps and lines, compression statements, and
9 other facilities; water, wastewater distribution maps and
10 lines, reservoirs and clear wells, pumping stations and
11 other facilities; and telecommunication distribution lines,
12 network plans, and central office facilities. Repeal of
13 the CSI Act without some other mechanism to protect CSI
14 leaves only the Right to Know Laws exemption at Section
15 708(b)(3) to avoid public disclosure of CSI information
16 that could be used for criminal or terroristic purposes.

17 We encourage the Committee to review the CSI Act
18 in its entirety both to modernize it to address risks to
19 public utilities, which have been identified subsequent to
20 its enactment such as those involving cybersecurity, and to
21 correct its flaws such as enabling better and more
22 transparent information-sharing among State agencies and
23 with county and local governments.

24 Given the increased risk to utility
25 infrastructure, both physical and cyber, it would not be

1 prudent to lower the protections against public disclosure
2 of CSI information. We believe the repeal of the CSI Act
3 will result in less protection against public disclosure of
4 CSI and increased risk to the public from persons or
5 entities seeking to harm the Commonwealth's infrastructure.
6 It is also reasonable to expect that repeal of the CSI Act
7 will result in public utilities being less willing to turn
8 over records containing CSI to Commonwealth agencies.
9 Additionally, the Commonwealth's regulations in the
10 Pennsylvania code would likely need to be amended if the
11 CSI Act is repealed.

12 Right to Know Law issues: There's a lack of
13 clarity in the act regarding the responsibilities of the
14 board and the Commission or other agencies subject to the
15 act when the board receives a Right to Know Law request.
16 Section 5 of the proposed act requires the Commission to
17 cooperate in providing information upon request to the
18 board. If the board requests information from the
19 Commission, there is no provision that allows the
20 Commission to decline to release the information, nor is
21 there an exemption to refuse dissemination to the board per
22 the Right to Know Law exemptions. There is no language in
23 Section 5 to explicitly protect the Commission from turning
24 over privileged confidential or critical infrastructure
25 information to the board.

1 In the event of a Right to Know Law request to
2 the board for information provided to it by the Commission,
3 the board must forward the request to the Commission for
4 review and response. Section 5 does not explain whether
5 the board or the Commission is responsible for sending a
6 response directly to the requester or only to the board.
7 And what happens if the board disagrees with the
8 Commission's determination regarding the Right to Know
9 request or improperly discloses information provided to it
10 by the Commission?

11 Similarly, it is unclear whether the board or
12 Commission defends a Right to Know Law response that is
13 appealed to the Office of Open Records. Under the existing
14 Right to Know Law, the obligation to respond to a request
15 is on the agency that holds the record created, received,
16 or retained in connection with the business or activity of
17 the agency, which in this case would be the Pipeline Safety
18 and Communications Board.

19 Per the Right to Know Law, the agency in
20 possession of the record is the agency that must respond to
21 the request. To the extent the record was provided by
22 another agency or third party, that other agency or third
23 party must be notified and given the opportunity to assert
24 a Right to Know Law exemption.

25 Section 5 of the act also appears to allow

1 agencies to direct the board to handle Right to Know Law
2 requests in a manner that does not necessarily require
3 notifying the agency that provided the requested
4 information. And this in fact may be inconsistent with the
5 third-party notification procedures in the act.

6 Additional concerns: Based on the current draft
7 of the act, it is unclear whether the board will attempt to
8 exercise some jurisdiction over interstate pipelines, which
9 generally fall under Federal jurisdiction, and if so, under
10 what authority? The definition of pipeline included in the
11 act does not differentiate between interstate and
12 intrastate pipelines and is ambiguous about whether
13 interstate pipelines are encompassed in the act.

14 Additionally, Section 4 of the act includes
15 information relative to siting, though this is a matter
16 under the purview of the Federal Energy Regulatory
17 Commission. Commonwealth agencies do not have siting
18 authority.

19 Under the act, the Chairperson of the PUC, a
20 member of the board, would need to attend quarterly
21 meetings, review information collected for dissemination to
22 the public related to pipeline activities, and aid in
23 coordinating communications with public and private
24 entities. But the review and potential discussion of
25 information relating to pipeline activities in these

1 quarterly meetings may present conflicts for the PUC Chair,
2 particularly regarding ex parte communications related to
3 cases actively being litigated before the PUC. Given the
4 number of contested pipeline cases that come for the PUC
5 and the involvement of pipeline operators and owners on the
6 board, procedures would need to be established to address
7 those potential conflicts.

8 Details regarding how the board will be funded
9 and are staffed or not included in the act, so the true
10 fiscal impacts are unknown. There's no explicit funding
11 mechanism, and utilizing current PUC staff in assessment
12 designs may result in administrative costs for the board
13 being borne by non-pipeline-related public utilities and
14 their customers.

15 The current structure of the proposed board
16 focuses all six gubernatorial appointees on representing
17 pipeline owners and operators. We would suggest including
18 representation from local government entities, along with
19 the general public. The act requires the logging of
20 information received by the board but is unclear where
21 information is logged, who has access to those logs, who is
22 responsible for maintaining that documentation, and what
23 procedures will be put in place to protect that
24 information.

25 The act is also unclear regarding coordination of

1 communications during emergencies and, if the board is to
2 have a role in this process, how that would interface with
3 the safety-related duties of the PUC, the Federal Pipeline
4 and Hazardous Materials Safety Administration, along with
5 local, county, and State emergency management agencies and
6 responders.

7 Finally, there should be greater clarity
8 concerning whether meetings of the board are public
9 meetings and how they will be noticed, advertised in order
10 to increase access and transparency.

11 As I stated at the beginning of this testimony,
12 the stated purpose of this legislation is admirable. As
13 the agency with jurisdiction for enforcement of pipeline
14 safety regulations in Pennsylvania, the PUC is highly
15 focused on matters related to pipeline infrastructure, and
16 we continue to stand ready to assist this Committee and
17 other concerned Members of the General Assembly in
18 addressing these matters.

19 The PUC appreciates the opportunity to testify
20 today, and we're happy to answer any of your questions.
21 Thank you.

22 MAJORITY CHAIRMAN BARRAR: Thank you. Questions
23 from the Members? Representative Comitta, would you want
24 to start?

25 REPRESENTATIVE COMITTA: Thank you very much,

1 Mr. Mendelsohn.

2 MR. MENDELSON: Thank you.

3 REPRESENTATIVE COMITTA: And, you know, the devil
4 is in the details, so good idea. And all of the concerns
5 that you listed, I understand. I get it. I share the
6 concerns, and this is the beginning of the opportunity to
7 amend a bill to turn a good idea into a reality.

8 So my general question would be do you see any --
9 is there any deal-breaker obstacle? In other words, all
10 the details you talked about -- and you made some
11 suggestions for how to improve them, and I included the
12 suggestion of instead of repealing Act 156, amending it, as
13 Senator Killion's bill addresses specifically pipelines and
14 so on. Is there any particular concern that you see as
15 intractable, you know, like this is a deal-breaker? Or do
16 you believe that a lot of work needs to be done to make
17 sure that we would get the confidentiality act concerns
18 clarified, amended, whatever is needed, which could be
19 helpful not only for pipeline safety but for communication
20 of all sorts of infrastructure and public safety and other
21 concerns. So is there anything that stands out to you as a
22 complete deal-breaker? And I suppose any and all, up to
23 you, could answer that.

24 MR. MENDELSON: Yes, Representative, thank you
25 for that question. At this time I can't say there's a

1 specific deal-breaker, but there are real concerns
2 particularly in the CSI area, the Right to Know, the
3 reporting requirements, the participation of the Chairman,
4 so I can't identify one issue that would be absolutely a
5 deal-breaker. And we continue to be happy to work with the
6 Committee.

7 REPRESENTATIVE COMITTA: Thank you very much.
8 And the PUC has been so helpful in all levels of public
9 safety and pipeline concerns, and I really, really
10 appreciate everyone's help along the way.

11 In thinking about the bill over time and talking
12 with a lot of people, we have a number of amendments, you
13 know, that we've thought of, and one of the things you
14 brought up was a concern about what is a public
15 conversation and what needs to be a private conversation.
16 So this board, does it always meet publicly, does it meet
17 privately?

18 And it would certainly seem from the
19 conversations I've had that there needs to be an
20 opportunity for an executive session for certain people
21 with security clearance or whatever you call it to be able
22 to talk about some of the overarching concerns that are not
23 suitable for public disclosure but that need to be
24 discussed among agencies with people who have the security
25 clearance to discuss them, at which time a recommendation

1 might be made, you know, a path forward identified that
2 could then be shared without sharing the actual sensitive
3 information but sharing an emergency procedure or something
4 else with the county emergency services, local
5 municipalities, the public participating in a discussion
6 about perhaps how to move that forward and so on.

7 So one of the amendments would be to allow for
8 there to be an executive board of the board, executive
9 group, that could meet that would allow for an executive
10 session to discuss, plan, or review matters and records
11 that are deemed necessary for pipeline safety, that if
12 disclosed would be reasonably likely to jeopardize or
13 threaten public safety. So would an executive component
14 help address that concern?

15 MR. MENDELSON: Representative, that's one of
16 the issues that we mentioned. And again, I think it's
17 something that can be looked at. We raise it. We don't
18 necessarily have the answer, but we were asked to look at
19 the legislation and wanted to -- you know, and we will
20 await the General Assembly's view on these things.

21 REPRESENTATIVE COMITTA: Thank you.

22 MR. MENDELSON: Thank you.

23 MAJORITY CHAIRMAN BARRAR: Representative Quinn.

24 REPRESENTATIVE QUINN: First, I want to say thank
25 you for coming today to testify. This is a really tough

1 issue, I certainly understand your concerns. I mean, from
2 our perspective as we look at this, this is a matter of
3 trying to figure out how do we balance the need of
4 everyone? I mean, obviously, the terroristic threats, the
5 criminal intent, things that people could do to potentially
6 sabotage pipelines, extremely important. And we certainly
7 don't want to have legislation that will put the general
8 public in a worse situation than what they're in today.

9 But with that said, in mean, it's my
10 understanding that the PUC and DEP don't necessarily have a
11 vehicle to communicate. And on top of that when I'm
12 sitting with our county emergency services and they don't
13 feel they have information to be able to adequately protect
14 the county residents, communication seems to be at the
15 forefront of each and every one of those situations that we
16 deal with. So if this legislation isn't necessarily the
17 vehicle that you see to be able to address those issues,
18 then we need something else.

19 I personally would like to see this legislation
20 move forward along with your suggestions and come up with
21 maybe even with the possibility that this organization may
22 fall in or roll into the PUC, so that's not off the table.
23 But we have to figure out a way to make our residents and
24 the people that are responsible for our residents feel more
25 comfortable with moving forward.

1 And I know this isn't necessarily a question, but
2 I do want to turn it back to you and say is that a
3 reasonable request, improving communication?

4 MR. MENDELSON: Sure. And I think what the
5 testimony, you know, that I gave today is we recognize that
6 legislatively there are some restrictions on ability to
7 communicate information. And we were asked to look at the
8 legislation, we saw those, and we take those, you know,
9 clearly, and we take those very seriously. And those are
10 the restrictions that we operate under both in terms of
11 confidential security information and Right to Know, so
12 that the environment in which we operate and we do our best
13 in that environment and keeping true to those laws.

14 REPRESENTATIVE QUINN: Right. I guess as a
15 follow-up, aside from pointing out the flaws, I'd actually
16 like to ask for your help in coming up with some amendments
17 that would improve it and allow us to move forward with
18 this legislation.

19 MR. MENDELSON: Sure. Thank you. We're happy
20 to do that.

21 REPRESENTATIVE QUINN: Thanks.

22 MAJORITY CHAIRMAN BARRAR: Mr. Mendelsohn, the
23 other two members with you, were they going to present any
24 testimony?

25 MR. MENDELSON: They were not, Chairman.

1 MAJORITY CHAIRMAN BARRAR: Okay. I was just
2 going to hold questions until they both had their
3 opportunity. But I think, to the two sponsors of the bill,
4 what we can do is maybe if you can -- either yourself or a
5 delegate from your organization, it's obvious that we need
6 to do a few stakeholder meetings on this. Your testimony
7 was very, I guess, encompassing of a lot of issues. And I
8 think the best place to do that would be, you know, in our
9 conference room going through it issue by issue where we
10 can ask questions on those issues and see if there's a
11 solution to them I think with some of the sensitive
12 information that you mentioned here that would be released
13 that could fall into the wrong hands is definitely
14 important that we do whatever we can to make sure that that
15 is held confidential.

16 Okay. So I would ask that, you know, if you're
17 agreeable to do a few follow-up meetings with my staff and
18 the makers of the bill.

19 MR. MENDELSON: Sure.

20 MAJORITY CHAIRMAN BARRAR: Okay. Thank you.
21 Representative Gabler.

22 REPRESENTATIVE GABLER: Thank you, Mr. Chairman.
23 And thank you for the testimony and for the information.

24 The question I have is I just wanted to ask for
25 your input as far as understanding the goal of the

1 legislation and understanding the structure that it
2 proposes. Is the concept going in a direction that you
3 feel would enable the most efficient and effective
4 enforcement of pipeline safety? Or are there other tools
5 or other elements within our government structure either
6 within the PUC or otherwise that would be better suited to
7 fulfill these roles?

8 I think it's important just as we start thinking
9 about finding the right tool to handle a situation, I want
10 to make sure that we're also asking the proper question.
11 Are the functions of what's proposed in this bill better
12 organized a different way, or do you think that this is a
13 structure that has promise?

14 MR. MENDELSON: Representative, thank you. I
15 don't think we necessarily have a view on that. Again, and
16 I come back to, you know, we were asked to take a look at
17 the legislation, so in terms of the concept, I'm not here
18 necessarily with an opinion on good or bad for the concept.

19 REPRESENTATIVE GABLER: And I appreciate that,
20 understanding that you don't want to speak beyond what your
21 charge is here, but just I guess if I could follow up, do
22 you feel that the legislation would add new capabilities
23 that the PUC itself does not already possess, capabilities
24 in the realm of pipeline safety?

25 MR. MENDELSON: I'm not sure I can answer that.

1 Again, you know, in looking at it, we had those -- it was
2 some real concerns in some of those areas that I mentioned
3 going forward --

4 REPRESENTATIVE GABLER: Okay. No, I --

5 MR. MENDELSON: -- in terms of operationally.

6 REPRESENTATIVE GABLER: I appreciate the input,
7 and I'll look forward to hearing more testimony. Thank
8 you.

9 MAJORITY CHAIRMAN BARRAR: Okay. Thank you.

10 Representative Ryan, please.

11 REPRESENTATIVE RYAN: Chairman, thank you very
12 much for your testimony, for the makers of the bill, I
13 really applaud them.

14 You know, to follow up what Representative Gabler
15 said, there is a unique concern here where you've got
16 security risks, and, as a retired Marine, I'm very
17 sensitive to that. In the military we had a group called a
18 joint interagency task force, and what I'm concerned
19 with -- and I think you've addressed some of these
20 issues -- my concern is a couple issues. One, I do
21 recognize the security infrastructure. Having done some
22 things in the Marine Corps, I would specifically go out
23 after infrastructure issues, so you wouldn't want that to
24 be publicly disclosed.

25 But I've had a couple of issues in my own

1 district specifically with the Sunoco pipeline where issues
2 happened, and with the fragmented approach that's happened
3 either with news media -- newspapers are not out as much,
4 radio might not be as consistent -- we were finding the
5 community was relying on me as a legislator posting updates
6 that I got from people to get news out, and that's just an
7 accident waiting to happen. And so I would truly encourage
8 the makers of the bill to discuss this issue.

9 My apprehension about the bill itself is that the
10 level at which it's being done is more strategic than
11 operational, and I would almost rather see, as the Chairman
12 brings up, a group that is working to say, okay, here's the
13 issue, we need to get the notifications out first because
14 in my mind the public safety has got to come first. We had
15 one of the issues in our district where it was out for two
16 and a half weeks before anybody knew what happened. And no
17 one did anything wrong. There just wasn't the notification
18 process in that scene. You've got municipalities, you've
19 got the local fire companies who are typically volunteers,
20 you had the county which did extraordinarily well, but the
21 reporting went actually to the Federal Government, to the
22 FERC, and by the time it filtered back down to us, it was a
23 week and a half later.

24 So I really appreciate, you know, that
25 opportunity to get a group of people to work together. I

1 think this bill is a really good beginning, but I really am
2 sensitive to the issues that you brought up and hope that
3 we could in fact do what the Chairman recommended in
4 finding a way to provide a solution to this that's
5 rational, reasonable, but most importantly in my mind
6 responsive to be able to get out the needs to the community
7 as quickly as possible for safety purposes. Thank you.

8 MR. MENDELSON: Thank you.

9 MAJORITY CHAIRMAN BARRAR: Thank you.

10 Representative Comitta.

11 REPRESENTATIVE COMITTA: Thank you, Mr. Chairman.

12 A couple of follow-up questions.

13 Mr. Mendelsohn, you expressed concern about the
14 restrictions and considerations of the Confidentiality Act,
15 and you recommended that it be modernized. Is that
16 correct? You said modernize Act 156, correct its flaws,
17 allow more transparency and sharing of information. You
18 noted in particular cyber attacks, I mean, something that
19 probably was not considered when this was written in 2006.

20 So my question on modernizing the Confidentiality
21 Act, to your knowledge, is anyone currently working on
22 modernizing the Confidentiality Act and addressing the
23 things that you listed, looking at its flaws, looking at
24 what isn't in it that should be in it, looking at how to
25 improve transparency?

1 MR. MENDELSON: Representative, I don't know
2 that. I don't know if people are. I know we follow it,
3 and we go to great lengths to make sure we are complying
4 with the law, but we recognize those concerns, you know,
5 moving forward in this legislation.

6 REPRESENTATIVE COMITTA: So would you say that,
7 currently, the way the law is written and being
8 interpreted, that it perhaps prevents some important
9 conversations that need to be held? I don't want to put
10 you on the spot. I know that's difficult to answer. But,
11 in other words, you made a recommendation that the PUC
12 thinks the act should be modernized, so I have to assume
13 from that that it could be working better than it is and
14 could be more user-friendly or more targeted to protecting
15 sensitive information but not preventing important
16 conversations that really can help improve public safety
17 whether it's pipeline or anything else.

18 MR. MENDELSON: So, look, it's fair to say. So,
19 as I stated, I mean, we take that law, you know, the
20 confidential security information, extremely seriously. I
21 just attended a program on cybersecurity, and it's
22 unbelievable some of the things going on and the
23 precautions that need to be taken.

24 Moving forward, we're always happy to work with
25 the Legislature, work with this Committee on possible ways

1 to improve the law because we also favor -- you know, we
2 want transparency. We want the public to be involved, but
3 we also are under restrictions with confidential security
4 information, and we need to make sure information is
5 protected. So it's clearly -- and I think you recognize it
6 -- and what you're saying is there's a balance there, and
7 we're willing to work with you.

8 REPRESENTATIVE COMITTA: So the Confidentiality
9 Acts in my research on, you know, what's working and isn't
10 working in that act and what exactly does it allow and not
11 allow, I learned that it establishes a document trading
12 system with a public track and a secure track. And what I
13 perceive from my conversations with people is that the
14 secure -- the public track I get. You know, you're not
15 going to publish on the internet, you know, where, you
16 know, information that is going to put people at risk. I
17 mean, none of us want to do that.

18 However, a Confidentiality Act that prevents
19 agencies from talking with each other or sharing safety
20 information for fear of violating the Confidentiality Act
21 sounds counterproductive to me to public safety because the
22 silo of each agency, you know, you have expertise and you
23 have focus, but the PUC, DEP, PEMA, you know, everyone has
24 a unique and valued perspective that I believe we don't
25 want to be stifling communication among agencies. So I'm

1 not talking about the public. I mean, you know, I'm all
2 about public transparency --

3 MR. MENDELSON: Sure.

4 REPRESENTATIVE COMMITTEE: -- and all of that. But
5 you have certain conversations that are secure among
6 professionals who respect the security of the information
7 but who are going to share their own unique perspective.
8 And what I have gleaned from my conversations is that the
9 interpretation of the Confidentiality Act is stifling or
10 prohibiting some important cross-agency conversations. And
11 I'm not going to ask you to agree with that or disagree
12 with that, but that's what I have heard and understand.

13 So do you think that one of the goals of
14 modernizing the Confidentiality Act would be, as you said,
15 to allow more transparency whether it's with public, you
16 know, as we said, I think we all agree on that, but in
17 particular conversations promoting and allowing and
18 encouraging conversations among agencies?

19 MR. MENDELSON: Sure. And in your comments,
20 look, we said in the testimony that the act should be
21 looked at to be modernized, and that may be part of it, to
22 encourage and to clarify communication among agencies and
23 ability to do so, and that may be part of a modernization.
24 And I think that's a fair statement.

25 REPRESENTATIVE COMMITTEE: And so to that point or

1 further, do you know, are there currently any multi-
2 stakeholder or multiagency discussions about the
3 overarching issues of pipeline safety, public safety,
4 pipeline emergency planning? Is there a forum, given this
5 burgeoning industry sitting on the world's fourth-largest
6 deposit of natural gas in Pennsylvania? Is there anyone
7 tasked with looking at -- you know, we listed all the
8 siting, construction, you know, all of these things, but
9 the overarching issue of public health and safety relative
10 to the development of the pipeline industry, in particular
11 NGLs? I mean, honestly, we're not talking so much about
12 the natural gas that comes to my house. We're talking
13 about the highly volatile natural gas liquids pipelines.
14 So perhaps the bill could be narrowed, you know, to focus
15 on that which is of greatest concern for public health and
16 safety. So do you know if there is any group tasked with
17 looking at the overarching issue of pipeline safety in
18 Pennsylvania?

19 MR. MENDELSON: I'm actually going to defer to
20 Mr. Metro, who's our gas pipeline safety manager.

21 MR. METRO: Yes, Representative, there's no
22 board, commission, entity that's looking at communications
23 between different State agencies, public, emergency
24 responders. In the past and in the last several years, the
25 PUC has been facilitating that. We don't have

1 authorization by the Legislature to do that, but we've seen
2 gaps that we stepped up and said, okay, let's meet with,
3 for example, Chester County Emergency Management, met with
4 them several times. I've met with the school districts in
5 Chester County several times to ensure that they're
6 communicating with Chester County Emergency Management.
7 You and I have had a public meeting that you sponsored and
8 hosted that we attended and Representative Quinn.

9 We're doing what we can do from the PUC's
10 standpoint, but we don't have authorization from the
11 Legislature to go out and enact some kind of Commonwealth-
12 wide communication board. So I understand where you're
13 coming from. It's just that we don't have that ability to
14 do that.

15 MAJORITY CHAIRMAN BARRAR: Representative Quinn.

16 REPRESENTATIVE QUINN: Mr. Metro, I know that you
17 are highly valued in the industry in general, that you've
18 worked with other States in addition to just Pennsylvania.
19 Are there any other States that would have a similar board
20 that you're aware of to help with these types of issues,
21 something that we could model or work with?

22 MR. METRO: I've never been asked that question,
23 Representative Quinn. We have to get back and look at
24 that. I'm not aware of any off the top of my head.

25 REPRESENTATIVE QUINN: Thank you.

1 MAJORITY CHAIRMAN BARRAR: Let me real quick --
2 and I think where I think Carolyn was going, I guess the
3 simple question would be do the agencies involved in
4 pipelines, do they talk to each other?

5 We had a meeting yesterday with one of these
6 State agencies about a tax that is implemented, and we were
7 told that there were three sets of records, basically of
8 who pays the tax, how much is paid, and with the different
9 agencies involved, we found out that none of them talk to
10 each other and they all have different lists of who is
11 paying this tax and what they're paying and that type of
12 thing.

13 And I think that's our concern here, you know,
14 something that led to the catastrophe of 9/11, that the
15 government agencies, the security agencies didn't talk to
16 each other. I mean, I think when I saw this legislation
17 and jumped on as a cosponsor, I kind of have a feeling
18 that, you know, the Environmental Protection Agency doesn't
19 necessarily talk to the State Police or talk to PEMA on a
20 regular basis about pipeline safety or potential hazards in
21 the pipeline industry. So I think that's the value I see
22 of the board is to bring those people to the table to sit
23 down and have a meeting and say, hey, we have an issue here
24 in this county, we have an issue over here. How do we all
25 come together? And then we have all the right heads at the

1 table to give us the information.

2 MR. METRO: Representative, I speak with the
3 Department of Environmental Protection on a weekly basis,
4 sometimes daily basis about pipeline safety issues. We
5 communicate regularly on all sorts of issues. Now, we are
6 very careful about discussing confidential security
7 information. We're limited by what we can express to them.
8 We speak with Pennsylvania Emergency Management on a
9 frequent basis, PennDOT, for example, so those
10 communications are occurring.

11 So we're in the field, many times we'll call out
12 DEP and say, hey, we need some assistance out there or
13 they'll call us and we'll come out and assist them in
14 whatever activity they're looking at in pipelines. So the
15 conversations are occurring. They're not at the
16 Commissioner level, but they're at the field level. So the
17 field engineers are speaking with each other whether it's
18 DEP or PennDOT or the PUC.

19 MAJORITY CHAIRMAN BARRAR: So if you're working
20 with PEMA on an issue, you, you know, make a phone call out
21 to PEMA and then they say to you we would need to request
22 some confidential sensitive information from you, would
23 they be able to attain that if they said they're looking at
24 a potential catastrophe? And are there only certain people
25 you would share that with in PEMA?

1 MR. METRO: The answer is no, we would not share
2 that with them unless there was some type of an agreement,
3 but we would not share that information with them.

4 MAJORITY CHAIRMAN BARRAR: Even though it might
5 be an emergency situation?

6 MR. METRO: Well, it would depend on the specific
7 situation, but in general if there was an investigation
8 that my group was working on, we would not share that
9 information unless it was vital to emergency response.

10 MR. YOUNG: Yes, the statute and the Commission
11 regulations have a procedure in place for dealing with
12 requested confidential information, that if a person or
13 entity or State agency or request from the Commission
14 confidential information. We've actually got procedures
15 not set up to deal with emergencies. It's set up to deal
16 with more routine requests for information. Obviously, in
17 an emergency we've got our PEMA preparedness officers that
18 activate and go to PEMA and are onsite, and there's a very
19 quick information exchange. But should that turn into a
20 requested exchange of information, I think the tendency on
21 our part, due to the consequences of violating the act,
22 would be to force the utility to disclose it to the other
23 agency rather than do it ourselves. And that's because the
24 penalties of the act are both criminal and involve loss of
25 employment.

1 At an individual decision-making level, the legal
2 advice that we've provided to the employees is you follow
3 the procedures in the act if there's information that
4 should be disclosed. The Commission can initiate those
5 procedures. A third party can initiate those procedures.
6 But they truly aren't set up for emergency sharing of
7 information. And if the act had an exemption for emergency
8 sharing, that would be a lot easier to deal with. But the
9 act is very tight on disclosure.

10 MAJORITY CHAIRMAN BARRAR: Thank you. That's
11 good information to have.

12 Representative Gabler for a follow-up question.

13 REPRESENTATIVE GABLER: Thank you, Mr. Chairman.

14 In following up on the prior discussion, I wanted
15 to ask just for a little bit more of a basic overview of
16 the function that the PUC currently provides in the form of
17 pipeline safety. And I know you've talked about it a
18 little bit, but generally, could you give us like the
19 30,000-foot view of what does the pipeline safety, gas
20 safety division that you manage, Mr. Metro, what does that
21 provide to the Commonwealth? Because at the core we're
22 really asking a structural question here, and I think
23 before we propose a change to a structure, maybe we should
24 understand the existing structure. Thank you.

25 MR. METRO: Our mission is to ensure compliance

1 with the Federal and State regulations as they pertain to
2 pipeline safety, so whether it's a distribution utility or
3 a pipeline gathering line or a transmission line, there are
4 certain Federal regulations that must be adhered to, and
5 there's certain State regulations. So our job is to have
6 20-some engineers in the field to monitor compliance to
7 those regulations. That's it at a 30,000-foot level.

8 REPRESENTATIVE GABLER: Thank you. I think
9 that's very helpful. And then my other question, we had a
10 lot of conversation about the CSI Act and about the
11 procedures that currently exist, some conversation about
12 modernization, so I just wanted to ask just kind of a
13 direct question about what an update to that act -- without
14 getting too deep in the weeds and not so much what an
15 update to that act might look like but rather if we were to
16 generally loosen up the restrictions between interagency
17 sharing of information -- I'm thinking Department of
18 Health, Department of Environmental Protection, PEMA,
19 PUC -- if we were to loosen that up a bit so that the
20 presumption was that internally within government agencies
21 that information would be shared more, could you walk me
22 through some pros and cons of an approach like that? And
23 I'll just end my questioning there. Thank you.

24 MR. METRO: Representative Gabler, the two areas
25 where we've identified the most need for changes are in

1 that, to explicitly allow for them. The problem is that
2 the existing act doesn't expressly permit, nor does it
3 create a mechanism for that sharing to occur. So in the
4 absence of that, we don't share.

5 And then secondly, I think an area that
6 structurally inside the act should be looked for is the act
7 lets the public utility at the first instance designate
8 anything at once as CSI upon filing so at the utility level
9 if they file it as CSI, we're obligated to treat it as CSI
10 subject to the challenge procedures. So if they file
11 something that's publicly available, either filed publicly
12 with another agency or filed, say, a copy of a map that was
13 on the internet, we've got to treat it as CSI even though
14 whether it truly is CSI may be in question.

15 Now, the majority of information is truly CSI,
16 but we definitely have seen instances where information
17 that's filed as CSI with us is not filed as CSI with
18 another agency. And it places us in a dilemma because it's
19 protected upon filing.

20 REPRESENTATIVE GABLER: One final comment. That
21 actually sounds very familiar to me as a military officer
22 dealing with sensitive and classified information, and we
23 have conversations all the time about whether something
24 might be overclassified. And we would have a -- that would
25 be our intelligence folks that would actually then look at

1 something and be the actual arbiter of whether or not
2 something is or ought to be classified.

3 So maybe that's something that needs to be
4 addressed in here is who would be the ultimate authority
5 on, you know, something is filed that way but is it
6 overclassified or not. It sounds and maybe we need to have
7 some discussion or some thinking on who should be the
8 ultimate classification authority, if we could call it
9 that, on some of this information so that we're not
10 overclassifying things that don't need to be and creating
11 additional complexity and bureaucracy.

12 MR. METRO: I think the act kind of covers that
13 now. Our regulations definitely do, but it's not triggered
14 on filing. It's triggered on the request. So if somebody
15 requests it, that process is available. But on filing, we
16 would have to trigger that process ourselves, and the
17 filing of it is typically done through the Secretary's
18 Bureau where you're dealing with clerks who will accept it
19 and aren't the substantive people to initiate the
20 challenge. So if we could tighten the definition of what
21 should be classified at the front end, I think that's an
22 area to explore.

23 REPRESENTATIVE GABLER: Would there be an
24 administrative issue with having everything reviewed at the
25 filing level? It sounds like that would be a lot of work,

1 an extra level of paperwork.

2 MR. METRO: And the people that are receiving it
3 are not the best people to make that initial determination.

4 REPRESENTATIVE GABLER: Yes. Okay. Thank you.

5 MAJORITY CHAIRMAN BARRAR: Representative Gillen.

6 REPRESENTATIVE GILLEN: I was just briefly
7 sharing with my colleagues since the buzzword here is
8 classified information, I know very little about it. I
9 have five daughters at home, and it's pretty much an open
10 book of all that goes on in the house.

11 But it is a touchstone on public safety. I live
12 in a community where we have the pipeline footprint going
13 through, and I admire the work of my colleagues on a
14 bipartisan basis. I think they've been very articulate.
15 And I want to thank you as you are tasked by the
16 Legislature to enforce safety standards.

17 Specifically -- and maybe Mr. Metro for a very
18 brief question, I have been participating in tactical
19 pipeline response training for the last six years. I've
20 been 30 years as an emergency medical technician, and we
21 have our firefighters, the distinguished group of men and
22 women volunteering in our community, professional
23 firefighters, other emergency response individuals,
24 officials from local government. How much cross-
25 pollinating are you doing with those individuals that are

1 training week in and week out? And I believe you have the
2 Paragon Safety Group coming in on an annual basis. How
3 much intersection do you have with those groups, and can
4 you speak to the efficacy of their work?

5 MR. METRO: Yes, we have a large role in that
6 emergency responder portion that you're speaking of. The
7 Federal pipeline safety regulations require a public
8 awareness program by all pipeline operators. So given that
9 each operator is required periodically to meet with
10 emergency responders, talk to them about emergency
11 response, do some training. The Commission in the past has
12 sponsored pipeline emergency training for certain counties.
13 And the last one I think we did was Chester, Delaware, and
14 there was a third county I can't think of off the top of my
15 head. And we had individuals from the Federal Government
16 come in and do a train-the-trainer program. We sat down
17 with the Fire Commissioner and talked about pipeline
18 emergency training and what we can do.

19 And as you are aware, a big issue on training for
20 emergency responders comes down to funding and getting the
21 funding necessary for them to be able to do that training.
22 But, as a whole, the pipeline operators across the
23 Commonwealth are required to have that training with
24 emergency responders.

25 REPRESENTATIVE GILLEN: Thank you. Thank you,

1 Mr. Chairman.

2 MAJORITY CHAIRMAN BARRAR: Thank you,
3 Representative Gillen.

4 Representative Comitta.

5 REPRESENTATIVE COMITTA: Thank you, Mr. Chairman.

6 Mr. Metro, no one is more collaborative,
7 proactive, knowledgeable than you about pipeline, pipeline
8 safety, addressing people's needs, compassion. I want to
9 thank you for that because it has been very, very
10 frustrating to say the least and really upsetting for a lot
11 of the people who live, you know, personally in my
12 district, but my district is not alone.

13 In particular with the Mariner pipeline -- we're
14 not talking about Mariner or any specific -- we're really
15 talking about the overarching issue of primarily NGL
16 pipelines and how to improve public safety and
17 communication as a part of reducing stress and promoting
18 public health.

19 So you were asked about, you know, do the
20 agencies talk with each other, does the PUC talk with
21 anyone, and I know, you know, you've got hotlines to
22 everybody need to talk with in any incident, any emergency,
23 anything that you're working on.

24 The need and the goal of House Bill 1568 to
25 create a Pipeline Safety and Communications Board certainly

1 would impact and hopefully improve emergency planning,
2 emergency response, you know, and all the communication and
3 planning that goes with that in specific areas. But the
4 main goal is to set the table for a multi-stakeholder
5 conversation about the overarching considerations,
6 consequences, unintended consequences of the burgeoning
7 natural gas industry and, you know, the different material
8 that we're dealing with and, you know, in particular in
9 densely populated areas such as the Mariner pipeline.

10 And you have been present -- and I thank, you
11 know, DEP and PUC and PEMA and PHMSA and FERC and everybody
12 who's been involved in the discussions that I've been
13 holding in Chester County. I mean, we've really been --
14 we've actually created a little mini Pipeline Safety and
15 Communications Board in Chester County. And we've been
16 able to address specific concerns of people living along
17 the pipeline, specific concerns of municipalities along the
18 pipeline, and specific concerns of county emergency
19 management services and building relationships, having
20 communication, and solving problems like on-the-ground --
21 school district there, you know, we've got everybody in the
22 same room. And to my knowledge it's the only such
23 conversation that's happening in Pennsylvania. And I'm
24 hoping and I believe what we're doing is helping inform
25 practice and perhaps policy across the Commonwealth but,

1 you know, mostly we're looking at Chester County and what
2 we can do to improve things there.

3 So my question is sort of a follow-up on, you
4 know, do the agencies talk with each other. And when we
5 have our meetings, the agencies talk with each other. And
6 there are lawsuits all over the place, and there are
7 certain things we don't talk about. But most of the
8 important things we can talk about and we've solved a lot
9 of -- for example, having PHMSA in the room, one of the
10 overarching public safety concerns that came out in the
11 conversation was can you in fact use a cell phone in an NGL
12 pipeline emergency or is it an ignition source? And if
13 your school district texts you or your county texts you,
14 you're going to blow up the neighborhood, was actually in
15 the PHMSA guideline on how you respond to a natural gas
16 liquid incident, release. You know, you don't want to
17 ignite it. And they list all the ignition sources, your
18 doorbell, your garage door opener, you know, you walk
19 upwind and uphill, and et cetera, et cetera. And one of
20 them was you can't use your cell phone.

21 Well, I can tell you the last two and half years
22 of conversations people have been apoplectic about this.
23 Well, that cell phone and text and Chesco alert and
24 everybody else alert is a text. You know, your phones go
25 off, you know, three times a week these days for weather-

1 related things. And you pay attention and you go like,
2 well, what do I need to know?

3 And so with this cell phone concern is being an
4 ignition, people were saying they were immobilized. The
5 superintendents are like I'm not going to let people know
6 what we're doing, where their kids are? How are people
7 going to talk with their neighbors or know what -- so it
8 was a complete -- everybody was just stumped on that one.
9 And it really caused a lot of stress and a lot of concern.

10 And so then in those conversations we said, well,
11 is a cell phone actually an ignition source? Can somebody
12 look into that? If it is, then it is. If it isn't, then
13 it isn't and we need to get rid of it. They did the
14 research. They said, um, actually, it's not. And PHMSA
15 said so we're going to remove that from our literature.

16 That one thing -- let's say all the conversations
17 we've had -- I don't know how many we've had, but we've had
18 many and they'll be ongoing -- that one little detail of
19 overarching public safety concern opens the door to the
20 entire emergency management system, you know, working the
21 way it works best. And for PHMSA that will also impact not
22 only Pennsylvania but the whole country.

23 So that is a small example of the value of the
24 multi-stakeholder, you know, people talking. And instead
25 of just talking with the people in your own field or just

1 talking about an emergency, sort of imagining what is
2 preventing us from doing the best we can with emergency
3 planning? What is preventing us from making pipelines
4 safer or siting, construction, communication, whatever it
5 is?

6 So I know you communicate with everyone all the
7 time, and I am so grateful and everyone is grateful. But
8 is there -- other than, you know, the little Chester County
9 conversations that we've been having, is there any other
10 group or regular opportunity for that kind of a multi-
11 stakeholder conversation about those overarching issues
12 that might uncover something like a cell phone is not an
13 ignition source? Is that happening?

14 MR. METRO: Well, first, thanks for the kind
15 comments. When we first got into this discussion about
16 education and transparency and communications, we believed
17 Chester County was one of the elite counties in our
18 Commonwealth in purposes of that, their communications with
19 emergency responders. Their mapping system of pipelines
20 was top among all the counties in the Commonwealth. And we
21 quickly learned that communications were not occurring
22 between school districts, between emergency responders for
23 each of the districts, municipalities in Chester County.
24 We learned that there was issues with communications from
25 the county level. And that I don't want to say surprised

1 us. It shocked us.

2 And through your leadership we began these
3 meetings, and we brought all the people together. We
4 brought PHMSA, and the cell phone communication is an
5 excellent example of what PHMSA have been putting out and
6 that Pennsylvania Emergency Management was looking at
7 because they put out their emergency response through cell
8 phones. So that was an issue that was very concerning to
9 the residents in Chester County. How do we get over this
10 issue of if you use your cell phone, something could occur?
11 And we were able to fix that in these meetings.

12 And I agree with you. Those meetings are an
13 excellent way for all of the stakeholders to get together
14 and talk about pipeline safety issues and not so much that
15 in-the-weed kind of approach but it's more of a 10,000-foot
16 level saying here's what we have is an issue, who can help
17 us with it. I agree with you.

18 MAJORITY CHAIRMAN BARRAR: Great.

19 REPRESENTATIVE COMITTA: So maybe, you know, we
20 think about the model that we've sort of developed in
21 Chester County. Maybe there's a need for a State board.
22 Maybe there's an opportunity for replication of county-by-
23 county conversations without the need for
24 institutionalizing a board.

25 But I do believe that the issue of pipeline

1 safety, particularly NGL liquids, particularly sitting on
2 the world's fourth-largest deposit of natural gas, that
3 Pennsylvania as a Commonwealth needs to have the
4 conversation of what are the challenges and opportunities
5 for making this industry safer for the people who live
6 along the pipelines and all the people of Pennsylvania?

7 MAJORITY CHAIRMAN BARRAR: Great. Thank you.
8 Thank you, Carolyn, Representative Comitta.

9 We're going to get to the next testifier if
10 that's okay with you. We're going to let you go. But we
11 thank you for being here. It's obvious that we need to
12 follow up and do some stakeholder meetings so we can
13 dissect your testimony a little bit better because I'm sure
14 there's a lot more questions. And we thank you for being
15 here today.

16 MR. METRO: Thank you.

17 MR. MENDELSON: Thank you.

18 MAJORITY CHAIRMAN BARRAR: Okay. Our next
19 testifier is Sarah Boeteng. Did I say your name right,
20 Sarah?

21 MS. BOETENG: Yes, that's right.

22 MAJORITY CHAIRMAN BARRAR: Okay, good. I was
23 hoping. And Sarah is the Executive Deputy Secretary with
24 the Pennsylvania Department of Health.

25 MS. BOETENG: Hi. Thank you. Good morning. Let

1 me just get settled here.

2 So, as was shared, I am Sarah Boeteng. I'm the
3 Executive Deputy Secretary at the Pennsylvania Department
4 of Health. I want to begin by thanking Chairman Barrar and
5 Chairman Sainato and all the sponsors of the bill for
6 inviting the Department to participate in today's
7 conversation.

8 So the mission of the Pennsylvania Department of
9 Health is to promote healthy lifestyles, prevent injury and
10 disease, and to assure the safe delivery of quality
11 healthcare for all citizens of Pennsylvania. To carry out
12 this mission, the Department continues to prioritize
13 addressing emerging public health threats and environmental
14 health concerns. And a rising concern has been the
15 potential health impacts of pipeline activities.

16 Spills and leaks can result in and can have
17 significant implications for whole communities. As such,
18 the Department of Health has created the Unconventional Oil
19 and Natural Gas Complaint Registry. Individuals in
20 Pennsylvania who have health concerns related to the oil
21 and gas industry are encouraged to submit their concern to
22 the Department of Health by email or phone, and that
23 information can be found on our website, Health.PA.gov. We
24 then coordinate with our sister agency, the Pennsylvania
25 Department of Environmental Protection, to track and

1 investigate those claims. So, similarly, this Pipeline
2 Safety and Communication Board will be another effort to
3 collaborate between State agencies and key stakeholders to
4 address and inform the public.

5 The Department of Health recognizes that
6 effective, integrated, and coordinated communication is
7 essential to carry out our mission. People seeking advice
8 about health risks often turn to family, friends,
9 healthcare practitioners, coworkers, teachers, counselors,
10 and faith leaders. We've talked about much of that this
11 morning.

12 And further, people are more likely to hear
13 messages from a familiar or local source than sometimes
14 they'll hear directly from us here in Harrisburg. So
15 therefore, the Pennsylvania Department of Health works
16 strategically to inform community leaders, healthcare
17 providers, policymakers, communities, and stakeholders
18 about current public health issues and how they can
19 respond. The Pipeline Safety and Communication Board will
20 help to bring this information to the people who need it
21 most.

22 Additionally, people respond differently based on
23 specific variables in a crisis. For example, if something
24 is reversible versus permanent, endemic versus epidemic,
25 natural versus manmade, or from a trusted institution

1 versus a mistrusted institution, people will act
2 differently. Our strategy to communicate public health
3 issues is modeled after clear and evidence-based best
4 practices on public health messaging developed by the CDC
5 and the World Health Organization.

6 The World Health Organization framework includes
7 six key components to public health messaging. First is
8 information should be accessible. Everyone in Pennsylvania
9 should be able to access information, and we must make sure
10 that information is available certainly to those who are
11 most vulnerable.

12 Second, information should be actionable. Good
13 public health messaging knows that if information is not
14 actionable, the target audience might overreact and
15 communicators could overutilize resources unnecessarily.

16 Third, it's important that the information be
17 credible. Transparency and honesty are important when
18 communicating in public health crises.

19 Another key component is relevancy. Before
20 disseminating information, we at the Department of Health
21 determine how individuals will recognize their level of
22 risk, how we can communicate in a culturally competent way,
23 and where else the public might be receiving this
24 information.

25 And then one of the most obvious components is

1 timeliness. When health threats are urgent, we determine
2 the best methods to engage priority populations quickly.
3 We consider how the audience will be faced with a health-
4 related decision, and how we can support our partners and
5 stakeholders in spreading this information.

6 In a health emergency, there is an urgent and
7 immediate demand for information even while information is
8 still being gathered. During this time, the role of the
9 Pennsylvania Department of Health is to reassure the public
10 that they have all available information, and that will be
11 forthcoming with additional information.

12 And it's also our responsibility at the
13 Department to ensure that information is understandable.
14 One of the first things we consider is how familiar the
15 target audience is with the topic, what preconceived
16 notions they might have, and what are the most important
17 messages we'd like individuals to know.

18 Additionally, at the Department of Health, we
19 deeply value the importance of empathy. Instead of trying
20 to eliminate a community's emotional response to a crisis,
21 we aim to help them manage their negative feelings by
22 feeling empowered to take action.

23 Through this framework, we are able to
24 effectively communicate during public health emergencies
25 and motivate individuals to take action. Applying this

1 framework results in a comprehensive outreach and
2 ultimately a healthier Pennsylvania. The Department of
3 Health plans to bring this strategy and our expertise in
4 public health messaging to the board so that information
5 regarding pipeline activities is shared with the public in
6 the most productive and effective way. The Department of
7 Health supports the creation of this aboard and believes
8 that it will contribute to a healthier and happier
9 Pennsylvania.

10 I thank you for the opportunity to testify today,
11 and I'm certainly open for questions.

12 MAJORITY CHAIRMAN BARRAR: Great. Thank you.
13 Members, are there questions, anyone? No?

14 Carolyn?

15 REPRESENTATIVE COMITTA: Thank you very much for
16 your testimony and for articulating the mission of the
17 Pennsylvania Department of Health and for underscoring your
18 expertise in communication, messaging, and underscoring the
19 importance of empathy.

20 One of the things that became clear to me with
21 the Mariner pipeline project in my district -- so we're
22 talking but overarching but, you know, using that NGL
23 project as an example. And I mentioned this actually to
24 the industry when they first told me about the project
25 coming through my district. You know, I got all the, you

1 know, specs and geo and this, that, and the other thing.
2 And I said, okay, you know, thank you. I understand the
3 whole thing. And, you know, public safety and public
4 health is number one. That's my number one concern.

5 And one of the things I said to them was in
6 addition to everything else you need to do regarding
7 construction and, you know, dealing with this highly
8 volatile product that's going to be going through this
9 pipeline, I said I believe that communication -- effective,
10 timely, actionable, accurate information -- is going to be
11 one of the keys to promoting public health and safety,
12 whether it's about emergency planning, et cetera, et
13 cetera.

14 But I said from my work at the United Nations,
15 particularly starting around the Chernobyl accident in
16 1986, which was a disaster on many levels. But one of the
17 public health problems was lack of communication of timely,
18 actionable, accurate information and dissemination of
19 misinformation as well. But the lack of information led to
20 problems in the initial meltdown of the Chernobyl plant but
21 also the public health concerns. There were a lot of fears
22 about what was going to happen to the people impacted by
23 that radiation. There were concerns about birth defects,
24 certainly thyroid cancer.

25 And not to diminish any of the actual tragedies

1 and public health casualties of that horrible accident,
2 mostly the birth defects and, you know, the thyroid cancer
3 was dealt with with iodine pills, you know, in an
4 epidemiological, you know, way. So the greatest fears that
5 people had of having deformed children and passing, you
6 know, deformed genes on to future generations has not
7 played out. But that fear created a population of people
8 who have a posttraumatic stress related to the fear of what
9 could happen to them, what could be happening that they
10 can't see.

11 And so when the pipeline project came before me I
12 said, you know, there is a parallel here because there are
13 real worries and real concerns about, you know, natural gas
14 wherever it is, certainly, you know, exacerbated with the
15 liquids.

16 But the difference between what is an actual
17 worry and what is a perceived worry can really be impacted
18 by effective communication. Let's find out -- like I said
19 with the cell phones, should we be worrying about cell
20 phones? If yes, then let's worry about it and fix it. If
21 no, let's take that off the table. Okay, did that. Now,
22 we're going to focus on a real problem.

23 So I said to the industry, public relations,
24 communications, you know, that is going to be your number
25 one, in my opinion, aside from doing the project right, and

1 that's another whole issue -- and the industry has been
2 terrible with communication.

3 And then, as Paul Metro said, you know, and we
4 have seen, communication between State agencies, county,
5 county and local, local and public, and, you know,
6 everyone's trying and gets it, but there's not a good
7 coordinated effort even in Chester County which, you know,
8 we really are -- you know, we are a wonderful county and we
9 hope that we're sharing a lot of good practices and so on.

10 But this last West Goshen incident, communication
11 was the problem, not the actual -- well, the actual
12 incident did have significant impacts but not of the nature
13 that people feared. It was not a pipeline leak and
14 subsequent need for evacuation and all that. But people
15 didn't know, so level of stress goes up here.

16 So that's the long background for my concern
17 about public health and safety from, you know, the impact
18 certainly of an explosion, an explosion resulting from a
19 leak. I mean, that is, you know, God forbid, the worst
20 thing that could happen. And we're doing everything we can
21 to make sure that that never happens. But ongoing is this
22 chronic worry that people have about what's underground, is
23 it going to -- so could you talk about how communication,
24 timely, accurate, actionable information can help? And do
25 you agree that that is a public health concern?

1 MS. BOETENG: Sure. So the framework and
2 evidence-based framework is rooted in, I think, three
3 principles that you've highlighted, so that's timely
4 information-sharing, transparent information-sharing, and
5 actionable information-sharing to empower individuals who
6 are in crisis. So the Pennsylvania Department of Health
7 does that when called upon and practices doing that with
8 our sister agencies -- PEMA, DEP -- often so that we can be
9 prepared whether it be a pipeline emergency or a weather
10 emergency or any other type of emergency that Pennsylvania
11 might face. So I think the timeliness is important.

12 As you highlighted and we know in times of crisis
13 without having trusted, reliable sources putting
14 information out into communities, it creates an opportunity
15 for misinformation to bubble up and start becoming the
16 known information in the community.

17 Transparent information is important, and there
18 is a best practice with the public health crisis
19 communication to inform the public about what you know and
20 what you don't know and assure them that, as you know more
21 information, you will make that available.

22 But one commitment that we have at the
23 Pennsylvania Department of Health is that when we are
24 putting this information out to communities, that we
25 provide them an action item that they can take. Taking

1 action in an emergency can reduce the feelings of
2 hopelessness or helplessness a community can face, and so
3 encouraging them to evacuate or visit a healthcare provider
4 or have their children visit a healthcare provider if
5 that's the recommendation. We always like to couple when
6 putting out more general information about what's going on
7 in the crisis and how it's impacting the community.

8 MAJORITY CHAIRMAN BARRAR: Thank you. Anyone
9 else with questions?

10 Representative Quinn.

11 REPRESENTATIVE QUINN: Well, first, I simply want
12 to thank you for being here today as we discuss House Bill
13 1568.

14 Wow, it's funny when you start looking at these
15 things, the idea of this framework and having an evidence-
16 based approach, accessible, actionable, credible, the
17 timeliness, the understandability, and the empathy. And
18 that empathy concept comes right back to so many of the
19 specific issues that our residents feel and they are
20 dealing with on a daily or monthly basis.

21 And the idea of the cell phone has been such a
22 source for so many people of simply being unnerved, the
23 idea that the device that they're holding in their hands
24 could cause the tragedy that would add to an immense loss
25 in the community.

1 Anyway, I want to thank you for your willingness
2 to participate and be involved in the Committee as far as
3 coming out. I want to thank you for your work.

4 One thing I do specifically want to ask is have
5 you been or has the health organization been involved at
6 this point in trying to put out any information and trying
7 to help out up into this point? I know we're asking you to
8 serve on this potential committee, but have you been
9 involved at all up until this point?

10 MS. BOETENG: I would say our most specific
11 involvement is our regular partnership with the Department
12 of Environmental Protection around a larger bucket of
13 environmental health concerns, meeting with them regularly
14 around unconventional natural gas, health complaints that
15 come to the Pennsylvania Department of Health. Of course
16 PFAS and PFOA is an important issue that we've been working
17 in partnership with them on.

18 So I wouldn't say specifically on pipeline and
19 pipeline preparedness, not from where I sit, maybe more at
20 the division level. But absolutely we work regularly,
21 myself and Secretary Levine, we meet with Secretary
22 McDonnell and his team on a regular basis and our teams
23 from environmental epidemiology. And then the folks from
24 DEP themselves meet regularly to keep those lines of
25 communication open and coordinated.

1 REPRESENTATIVE QUINN: Well, I want to thank you
2 for coming out today, and hopefully you can be more
3 involved in the conversation because obviously you're
4 framework would add a lot to what we're trying to
5 accomplish here in Pennsylvania, especially keeping our
6 people informed and safe. Thank you.

7 MAJORITY CHAIRMAN BARRAR: Any other questions
8 from the Members? If not -- okay. Representative Comitta,
9 quickly.

10 REPRESENTATIVE COMITTA: Thank you.

11 MAJORITY CHAIRMAN BARRAR: We're falling way,
12 way, way behind.

13 REPRESENTATIVE COMITTA: Okay. Sorry about that.
14 A quick question maybe.

15 The Confidentiality Act, how has the act impacted
16 your ability to be effective communicators with accessible,
17 actionable, credible, relevant, timely information?
18 Because you are not dealing in a silo. You need
19 information from everywhere in order to get that correct
20 information to people when they need it. So do you see the
21 Confidentiality Act as a roadblock? Have you been able to
22 work within it? I mean, I'm sure you work within it
23 effectively, but do you think that if it were modernized,
24 as the PUC was mentioning, that it could enhance overall
25 public health as a result of that communication?

1 MS. BOETENG: So myself I haven't worked
2 specifically with the confidentiality of this type of
3 information that the earlier speakers spoke about, though
4 of course there's confidential information at the
5 Pennsylvania Department of Health in many areas. So I
6 certainly don't think having confidentiality is a roadblock
7 to providing good public health information to the
8 community who needs it, so our focus would be making sure
9 that individuals in the community who are concerned about
10 health impacts, aren't sure if they should visit a
11 healthcare provider or not, if they should take their
12 children to a healthcare provider or not, our
13 responsibility would be to communicate that type of
14 messaging. The confidential information that first
15 responders, firefighters may need would be beyond the
16 purview of the Department of Health.

17 MAJORITY CHAIRMAN BARRAR: Thank you. I want to
18 thank you for your testimony here today and taking time out
19 of your busy schedule to be here.

20 MS. BOETENG: Thank you.

21 MAJORITY CHAIRMAN BARRAR: Okay. Our next panel
22 is Mr. Ramez Ziadeh. Did I say it right?

23 MR. ZIADEH: Yes.

24 MAJORITY CHAIRMAN BARRAR: Okay.

25 MR. ZIADEH: Good morning.

1 MAJORITY CHAIRMAN BARRAR: Good. I practiced.
2 Deputy Secretary for Programs with the Pennsylvania
3 Department of Environmental Protection. Thank you for
4 being here today.

5 MR. ZIADEH: Thank you.

6 MAJORITY CHAIRMAN BARRAR: We appreciate it.

7 MR. ZIADEH: Good morning, Chairman Barrar,
8 Chairman Sainato, and Members of the Committee. My name is
9 Ramez Ziadeh. I'm the Executive Deputy Secretary for
10 Programs for the Department of Environmental Protection.
11 And on behalf of DEP, I would like to thank you for the
12 opportunity to testify on DEP's role in regulating pipeline
13 construction today.

14 To start, I would like to quickly cover the
15 Department's role in permitting pipeline construction.
16 Then, I will address the Department's compliance and
17 enforcement activities, the Department's efforts towards
18 interagency coordination, guidance that is currently under
19 development, and the Department's role in pipeline siting.
20 Finally, I would like to briefly touch on areas you might
21 consider for future legislation.

22 The three main DEP regulations that relate to
23 pipeline construction, each available online at PACode.com,
24 is, one, Chapter 102. The regulatory authority of Chapter
25 102 comes from the Clean Streams Law. We regulate erosion

1 and sedimentation from earth-moving activities. We call
2 those E&S activities. E&S plans are required to be
3 developed and implemented for all earth disturbance
4 activities that involve 5,000 square feet or more.
5 Additionally, a pipeline project that exceeds five acres of
6 total earth disturbance would need to obtain what we call
7 an erosion and sediment control permit. And that permit
8 would include approved plans for erosion and sediment
9 control and stormwater management, so it includes
10 stormwater controls during and after the construction
11 activity is completed.

12 Two, Chapter 105 and the authority of Chapter 105
13 comes from the Dam Safety and Encroachments Act. DEP
14 regulates water obstructions and encroachments under
15 Chapter 105, which are focused on activities in, along, or
16 across wetlands, rivers, lakes, and stream corridors.

17 And third, Chapter 106, which regulates
18 floodplain activities undertaken by political subdivisions
19 of the Commonwealth such as municipalities and also public
20 utilities. And some of the pipelines in the State are
21 considered public utilities, so they are regulated under
22 that chapter as well.

23 The Chapter 102 and 105 permits for pipeline
24 construction typically include project-specific special
25 conditions. They ensure environmental protection. For

1 example, in recent and previous permits, special conditions
2 have provided for the protection of private water supplies
3 to ensure drinking water sources were protected from
4 potential impacts from the pipeline construction activities
5 related under Chapter 102 and Chapter 105.

6 And in order to be as transparent as possible and
7 provide the public with the most current information on a
8 large-scale pipeline project or for major pipeline projects
9 across more than one DEP regional office's coverage area --
10 and we do have six regions in Pennsylvania. DEP has six
11 territories, including divided up in the southwest region,
12 northwest regions, north-central, south-central, northeast,
13 and southeast. DEP electronically posts project
14 information, including permit applications, final permits,
15 comment response documents, compliance and enforcement
16 documents, and other supporting documents on the DEP
17 pipeline portal.

18 Currently, the Department has information posted
19 on major transmission pipeline projects that cross the
20 State, including Mariner East 2, the Atlantic Sunrise
21 project, and the proposed PennEast project. DEP's pipeline
22 portal can be found directly on DEP's website. It's very
23 easy to find.

24 For pipeline projects that are regional,
25 information may be found on the associated regional

1 office's resources page by clicking on the community
2 information tab available on the DEP website as well. So
3 we have, for example, the Revolution pipeline. That would
4 be on the southwest regional page.

5 With regard to compliance and enforcement
6 activities associated with pipeline projects, DEP works
7 closely with county conservation districts and spec
8 projects to ensure compliance with the permit requirements.
9 Projects are inspected on a regular basis by DEP and/or
10 county conservation district staff.

11 During construction, permittees must address
12 inadvertent returns from horizontal directional drilling,
13 also known as HDD; spills of polluting substances; and
14 impacts to water supplies in a manner that satisfies all
15 requirements of Pennsylvania law, including the Clean
16 Streams Law, the Solid Waste Management Act, and the Land
17 Recycling and Environmental Remediation Standards Act.
18 Impacts must be fully addressed prior to resuming the
19 activity. DEP also investigates all complaints received
20 from the public.

21 DEP has taken and will continue to take strong
22 appropriate actions should violations occur. DEP issues
23 notices of violation, administrative orders, requiring
24 permittees to perform corrective actions for pipeline
25 installation activities that violate requirements in

1 Pennsylvania laws and/or regulations, cause pollution, or
2 present risk of pollution. DEP will continue to include
3 permit conditions that require work to stop when violations
4 occur and require the violation to be resolved before work
5 can resume. Additionally, DEP will continue to hold
6 permittees to the highest regulatory standards. In most
7 cases, permittees cannot receive amendments to permits or
8 have other work authorized until violations are remedied.

9 As far as agency coordination is concerned, DEP
10 regularly and systematically coordinates with other State,
11 local, and Federal entities, including the Pennsylvania
12 Emergency Management Agency, local first responders, county
13 emergency management agencies, the Pennsylvania Department
14 of Conservation and Natural Resources, PennDOT, Game
15 Commission, Fish and Boat Commission, Department of Health,
16 PHMC or Pennsylvania Historical Museum Commission, and also
17 U.S. Army Corps of Engineers, U.S. Fish and Wildlife
18 Service, and EPA.

19 With respect to landslides, sinkholes, and
20 subsidences that may impact the pipeline during or after
21 construction activities, DEP is in regular communication
22 with PEMA and the PUC. When necessary, DEP and PUC
23 coordinate site inspections. It is not common for citizens
24 to report sinkholes on a construction site before DEP, as
25 they are often witness to the event. Moreover, the

1 regulated entity has independent obligations under PUC
2 regulations to notify the Commission and address any safety
3 risks in accordance with applicable safety requirements.
4 DEP continues to work to enhance interagency coordination
5 and will remain diligent in notification to our sister
6 agencies and regulatory colleagues.

7 Now, I'd like to talk a little bit about policy
8 and guidance development underway. DEP has been fully
9 engaged in policy development recently related to pipeline
10 permitting and construction. To assist in this effort, DEP
11 assembled two stakeholder groups to specifically look at,
12 one, enhanced best practices in the design and execution of
13 horizontal directional drilling, HDD; two, recommended
14 methodology and factors to consider to complete an
15 alternatives analysis under Chapter 105. The stakeholder
16 group meetings have recently been completed, and we have
17 made great progress. Draft guidance documents are
18 currently under development, which we anticipate will be
19 available for public comment by winter of 2020.

20 With regard to pipeline routing, DEP has limited
21 authority. All pipeline proponents are required to propose
22 a route that complies with the requirements of the
23 Department's laws and regulations and demonstrates that no
24 feasible alternative exists with respect to impacts to
25 water resources.

1 For Federal Energy Regulatory Commission, FERC-
2 regulated projects, siting and routing go through a
3 detailed process administered by FERC. Details can be
4 found on FERC's website.

5 The process is governed by Federal regulations
6 and is not dictated by State law or regulation. A
7 pipeline's route is selected by the pipeline company.
8 DEP's environmental permitting regulations affect the
9 pipeline's route in limited areas based on potential
10 impacts to water and wetland resources across the project
11 corridor. However, the permitting changes do not result in
12 widespread changes to the route chosen by the pipeline
13 company. DEP cannot arbitrarily and without regulatory
14 basis dictate where a pipeline is sited. Our regulatory
15 basis is found within our statutory authority.

16 Once installed, the regulation or enforcement of
17 standard safety practices for transportation of natural gas
18 or natural gas liquids through the pipeline is outside the
19 scope of DEP's Chapter 102 and Chapter 105 permitting
20 authority. The PUC and the Federal Pipeline Hazardous
21 Materials Safety Administration oversees and enforces
22 issues related to the safety of pipeline construction and
23 maintenance and operation.

24 The DEP would like to take this opportunity to
25 offer some suggestions regarding legislation currently

1 before the General Assembly or that could be taken up to
2 improve public health and safety.

3 First, with respect to House Bill 1568, we
4 applaud Representative Comitta's leadership on the issue.
5 As noted earlier in this testimony, DEP and other agencies
6 work collaboratively in what we believe to be the same
7 spirit in which the legislation has been introduced. We
8 support the concept of increased communication and
9 transparency related to pipelines in the Commonwealth.
10 Creating a board could facilitate more communication,
11 collaboration, and transparency regarding information and
12 issues related to pipelines.

13 The administration would be supportive of this
14 bill with some amendments to help ensure the proposed board
15 best serves the needs of Pennsylvania, and we hope to work
16 together with the Representative to this end. Most
17 notably, the definition of pipelines may need to be
18 redefined to cover only large-scale transmission oil and
19 gas pipeline projects. As it is currently written, it
20 includes all gathering and distribution lines, as well as
21 pipelines that transport water and sewage.

22 There also needs to be greater clarification
23 regarding the kind of communication and information-sharing
24 the board would be doing to ensure that we are not
25 duplicating efforts already underway at DEP and other

1 agencies.

2 Second, as noted above, DEP's role in siting and
3 routing decisions is limited to its regulatory
4 responsibilities related to the protection of water and
5 wetland resources. As noted repeatedly in my testimony,
6 there is currently a gap in State law regarding siting and
7 routing authority for projects that are not subject to FERC
8 jurisdiction, and I believe the PUC earlier discussed that
9 FERC regulates interstate natural gas transmission
10 pipelines. So intrastate pipelines or pipelines that
11 transmit natural gas liquids are not subject to FERC
12 requirements.

13 Governor Wolf has called for legislation granting
14 siting authority to the PUC, and we believe many of the
15 concerns raised by Members of the General Assembly in the
16 public could be addressed via such legislation.

17 Third, under the Clean Streams Law, DEP can and
18 does respond when informed of private water supply impacts.
19 In 2017 DEP put on court record its policies and practices
20 used to respond, investigate, and resolve private water
21 supply impacts in the oil and gas context. DEP can require
22 termination of the activity causing private water supply
23 impacts and can require restoration and replacement of the
24 supply under most of our statutes.

25 However, DEP currently does not have the

1 statutory authority to regulate private water wells. As
2 such, at this time DEP lacks, one, an inventory of private
3 water supply wells, including the location and connected
4 facilities; two, private water well construction standards.
5 Perhaps most important to note, DEP lacks the legal
6 authority to require such information be provided to the
7 State and to establish and enforce private water well
8 construction standards.

9 Without construction standards, private water
10 wells can be improperly constructed, increasing the risk
11 for the creation of pathways for bacteria and other
12 contaminants that degrade the well water quality. Without
13 records of existing water wells, it is difficult for DEP to
14 proactively protect private water wells.

15 DCNR maintains a publicly available database that
16 contains limited information on private water wells that
17 has been voluntarily provided by residents. This database
18 is incomplete, but it is the most comprehensive source
19 available due to the limitations from the lack of authority
20 regarding private water wells.

21 In the absence of complete data, the pipeline
22 companies have been directly reaching out to property
23 owners along the project corridor to determine the
24 existence of private water wells. The HDD guidance
25 underway by DEP will provide additional recommendations to

1 pipeline companies for acquiring accurate data on private
2 wells.

3 DEP will continue to respond and require
4 restoration of private water well impacts. However, it
5 would be much more effective to be able to take a proactive
6 approach than waiting until private water wells are already
7 impacted. The Commonwealth cannot protect something that
8 it does not know is there. We must reiterate that there is
9 a need for a more comprehensive and effective approach to
10 private water well protection.

11 Thank you again for inviting DEP to testify
12 before the Committee on this important topic. We look
13 forward to continuing to work with the General Assembly to
14 address these issues. I thank you for your time, and I'm
15 available to respond to any questions that you may have.

16 MAJORITY CHAIRMAN BARRAR: Thank you. Thank you
17 for being here. I think we do have some Members who want
18 to ask questions. You brought us a lot of good
19 information, and especially some of your legislative
20 recommendations that necessarily aren't a factor to this
21 Committee as the Emergency Response, Emergency Preparedness
22 Committee, so I would try to ask the Members if they're
23 going to ask questions, just try to keep it into the scope
24 of the relationship between this board that would be
25 created by this legislation and the job of the part that

1 the DEP would play within this legislation.

2 Any questions from Members? Carolyn, any? Okay.

3 REPRESENTATIVE COMITTA: Thank you, Mr. Chairman,
4 and thank you, Mr. Ziadeh, and for all of your work, your
5 testimony today, and all of your dedication and good work
6 on behalf of the citizens of Pennsylvania.

7 MR. ZIADEH: Thank you very much.

8 REPRESENTATIVE COMITTA: Thank you.

9 MR. ZIADEH: I appreciate it.

10 REPRESENTATIVE COMITTA: So the elephant in the
11 living room on this Pipeline Safety and Communications
12 Board is clearly the Confidentiality Act and who can share
13 what information with whom, on a secure track or on, you
14 know, the public track.

15 So, specifically on the secure track, talking
16 among agencies, what would you say is your experience
17 working within the DEP and of course again on the ground or
18 in an emergency or particular project or whatever? My
19 understanding is there's a sufficient conversation and
20 sharing of information to address whatever the issue is at
21 hand at any particular time.

22 So is there in your awareness any ongoing
23 discussion about the overarching -- well, you just made
24 recommendations, you know, siting and public, private
25 wells, and so on, definition of pipelines, and I think

1 that's really important. So what is your experience in
2 working within the Confidentiality Act and how it impacts
3 your ability to communicate with agencies in particular
4 about the overarching issues of public health and safety
5 relative to, let's say, natural gas liquids pipelines? And
6 are there any ongoing discussions, multi-stakeholder or
7 otherwise, discussions about -- obviously, you're having
8 discussions about how can we improve legislation to improve
9 pipeline safety, but any, let's say, multiagency or multi-
10 stakeholder discussions --

11 MR. ZIADEH: Sure.

12 REPRESENTATIVE COMMITTEE: -- of the overarching
13 issues?

14 MR. ZIADEH: So, first, just to give you a quick
15 idea of the type of information that's posted on the portal
16 related to those permit applications on actual permits, we
17 are required by the regulations to make that information
18 available to the public and take public comments on these
19 applications. So, for example, for a pipeline project, the
20 application would include site plans and maps that show the
21 proposed route, that shows all the water resources that may
22 be impacted by this pipeline, so that information is
23 publicly available on the website.

24 We do redact some information, you know, things
25 like private property owner information if it became a part

1 of the application somehow. We do redact private
2 individuals' information and, you know, things like Social
3 Security or if anybody for whatever reason puts something
4 down. Things like that we do redact. But overall, if you
5 look at the pipeline portal, you will find comprehensive
6 information that gives you a lot of detail about these
7 proposed projects.

8 As far as interagency coordination, as I
9 indicated, with PUC, especially on some of those big
10 transmission pipeline projects where we may have had some
11 issues, we are in constant coordination and communication.
12 You know, if we hear about a sinkhole, for example, that
13 affects -- or if somebody reports an incident involving a
14 sinkhole but doesn't necessarily involve water or a stream
15 or wetland but it exposed maybe or maybe there's suspicion
16 that there's a pipeline underneath that sinkhole, we report
17 that right away to PEMA and PUC. So we do have an
18 electronic reporting system that we work through through
19 our emergency response.

20 And same thing, those incidents when they are
21 reported to PEMA and same thing, PEMA would basically
22 disseminate that to all the agencies that would need to
23 know about it. And we are very prompt in responding to
24 those, and we coordinate with the PUC on remedial measures
25 that need to take place. So that process is already in

1 place.

2 REPRESENTATIVE COMITTA: So do you find the
3 current wording of the Confidentiality Act to in any way
4 prevent you from sharing information and having discussions
5 about pipeline safety?

6 MR. ZIADEH: I would have to defer back to PUC on
7 that. But from DEP's perspective, we respond to complaints
8 promptly. You know, we take care of any violations right
9 away. We take enforcement action where we need to within
10 our authority. I mean, I know they do have some security
11 concerns, but that doesn't impact the work that we do as it
12 relates to our existing authority involving water
13 resources.

14 MAJORITY CHAIRMAN BARRAR: Okay. Representative
15 Comitta? Okay. I'm sorry. Representative Gillen.

16 REPRESENTATIVE GILLEN: Mr. Deputy Secretary, did
17 I pronounce that correctly? Okay, good. Thank you for the
18 essential work that DEP is performing. I live on a farm.
19 We do have a well, pond, wetlands, stream, Seven Springs,
20 so I appreciate your agency and all it stands for.

21 And you indicated you investigate all complaints.
22 Just a macro question and just one question. Relative to
23 resources, personnel, the workload, do you have the
24 capacity to cover all that's going on out there today?

25 MR. ZIADEH: It is difficult. We lost a lot of

1 staff over the last decade, so it is difficult. We have to
2 prioritize a lot of our work and focus on the biggest
3 issues and prioritize those and take care of those. But we
4 do try to attempt to cover as much as possible.

5 Some of the staff that we have working on permit
6 reviews also conduct some of these complete investigations
7 and work on compliance documents and review corrective
8 action plans, so, yes, we're strained for resources but we
9 do the very best that we can. But we are pretty effective.
10 You know, right now, I feel like especially on the critical
11 issues that impact Pennsylvanians, we prioritize those.

12 REPRESENTATIVE GILLEN: Thank you.

13 MR. ZIADEH: You're welcome.

14 REPRESENTATIVE GILLEN: Thank you, Mr. Chairman.

15 MAJORITY CHAIRMAN BARRAR: Great, thank you.

16 Representative Quinn.

17 REPRESENTATIVE QUINN: Mr. Deputy Secretary, I
18 want to thank you for being here.

19 MR. ZIADEH: Thank you.

20 REPRESENTATIVE QUINN: This is tough because I
21 want to keep this in a very positive light, but I also
22 represent my district, and I would be remiss if I didn't
23 mention all of the misses if you would as far as from the
24 sinkholes and the drinking water and what my residents have
25 had to deal with specifically.

1 I know that I do take exception to some of the
2 idea that you don't necessarily have the information that
3 you need to identify private water wells. I mean, I think
4 if I have a list of 100 properties and I know that 50 of
5 them are on public water, I think that automatically
6 assumes that the other 50 are most likely private water
7 sources. But if we need to get you more information,
8 that's something that we need to take up.

9 I guess I have more of a request, and that's
10 simply, as we go back and look at Act 156 and we look at
11 our legislation at hand today, that you gave us a very
12 detailed bullet points how we can improve this so that you
13 can be more effective in your job because what my residents
14 have had to deal with can't happen again.

15 Anyway, with that, I appreciate you being here
16 today.

17 MR. ZIADEH: Thank you. Thank you very much.

18 MAJORITY CHAIRMAN BARRAR: That's it for
19 questions? Anyone else? Okay.

20 Thank you for being here --

21 MR. ZIADEH: Thank you very much.

22 MAJORITY CHAIRMAN BARRAR: -- and for your
23 testimony.

24 MR. ZIADEH: I really appreciate the opportunity.
25 Thank you.

1 MAJORITY CHAIRMAN BARRAR: Let's see. Okay. Our
2 last testifier is Mr. Jon Fleming, Division Chief, Bureau
3 of Maintenance and Operations at PennDOT.

4 Do we have any written testimony on him? Oh,
5 we're getting it? Okay.

6 Begin your testimony when you're ready. We're
7 just passing out the written testimony that you've sent us,
8 okay?

9 MR. FLEMING: Okay. With that, I'd like to say
10 good morning, Chairman Barrar and Chairman Sainato and
11 Members of the Committee. My name is Jon Fleming, and I'm
12 the Acting Director of the PennDOT Bureau of Maintenance
13 and Operations. And with that, on behalf of the Secretary
14 Leslie Richards, I'd also appreciate the opportunity to
15 comment on House Bill 1568 and the proposal to establish
16 the Pipeline Safety and Communications Board and repeal the
17 Public Utility Confidential Security Information Disclosure
18 Protection Act of 2006.

19 Pipeline safety is very important to the
20 infrastructure and energy concerns of the Commonwealth, and
21 PennDOT concurs that there is a need to ensure safe and
22 transparent operation of underground utilities and
23 pipelines and commends Representative Comitta and Quinn for
24 the leadership on this issue.

25 PennDOT's primary point of engagement on pipeline

1 issues is through the underground utility line protection
2 law, Act 287, as amended, which provided for what we now
3 know as the One Call system. PennDOT was included on the
4 development of Act 50 of 2017, which amended that act.
5 PennDOT holds a permanent position on the Board of
6 Directors of the Pennsylvania One Call system.

7 Pipelines crossing the State are regulated by
8 PennDOT and authorized via a highway occupancy permit
9 similar to the way driveways are regulated and authorized
10 via the highway occupancy permit process. Often, pipeline
11 owner/operators need access to either side of the State
12 highway to continue the construction of their pipeline
13 cross-country. PennDOT regulates the location of pipeline
14 to ensure the facility is being placed in a location where
15 it minimizes possible interference and impairment to the
16 highway, its structures, and highway traffic.

17 The construction of a pipeline is regulated to
18 ensure that traffic is not unduly impaired and proper
19 traffic control is in place while under construction for
20 the safety of the traveling public and contractor, as well
21 as to ensure the disturbed highway is restored properly.
22 Without these controls, we jeopardize preserving the safe
23 operation, maintenance, construction, and integrity of the
24 highway.

25 The intent of House Bill 1568, as drafted, is to

1 establish transparency in pipeline operations and location
2 through an appointed Commonwealth agency-led pipeline
3 safety and communications board. The board will be
4 empowered to collect and disseminate information pertaining
5 to the planning, construction, operation, maintenance,
6 management, inspection, and safety, of the emergency
7 response procedures for pipelines. The boards will
8 communicate those communications relating to the pipeline
9 activities with Federal, State, local government,
10 regulatory authorities, and pipeline companies.

11 The board will be allowed to disseminate this
12 information pertaining to the pipelines currently available
13 to Commonwealth agencies but is not allowed to be released
14 generally to the public under the Public Utility
15 Confidential Security Information Disclosure Protection
16 Act.

17 House Bill 1568 directs the board to refer any
18 Right to Know Law requests received for information is
19 received from a Commonwealth agency back to that agency for
20 response. In addition, the bill would also repeal Act 156
21 of 2006 entitled the Public Utility Confidential Security
22 Information Disclosure Protection Act.

23 Currently, pipeline operators are exempt from
24 providing critical information to State and local
25 governments citing their ability to withhold information

1 deemed critical to the protection of their pipelines.
2 Pipelines are the only underground utility for which
3 PennDOT, the Pennsylvania Emergency Management Agency, and
4 local emergency management agencies each receive separate
5 information regarding the types of product carried, the
6 depth and location of pipelines running under and parallel
7 to our highway network.

8 Pennsylvania highways require regular maintenance
9 and reconstruction and our pathways for conventional
10 underground and above-ground facilities. The ground under
11 and around our infrastructure is frequently disturbed with
12 digging for a variety of activities. Pipeline companies
13 are the only utility that is not required to provide
14 information, mark, or locate their infrastructure outside
15 of interstate highway crossings. Even with interstate
16 highway crossings, pipelines are not required to locate
17 those crossings when the placement of markers is not
18 practical and would not serve a purpose for which the
19 markers are intended.

20 The information is not only critical to PennDOT
21 to protect our infrastructure from accidental line strikes,
22 it is also critical for municipal and State officials
23 planning for the safe evacuation of Pennsylvania citizens
24 along our rural and non-interstate highway network during
25 emergency events. Thus, PennDOT supports the open and free

1 exchange of Commonwealth information pertaining to
2 pipelines afforded by House Bill 1568.

3 However, while PennDOT believes that government
4 agencies with a vested interest in protecting and
5 maintaining Commonwealth assets should all have necessary
6 information regarding any utility that occupies this asset,
7 including pipelines, PennDOT is also concerned with what
8 could be a much wider dissemination of this information
9 under the proposed bill.

10 As drafted, the bill empowers the board to,
11 quote, "collect and disseminate to the public information
12 of Commonwealth agencies relating to the planning, siting,
13 construction, operation, maintenance, management,
14 inspection and safety, and emergency response procedures
15 for pipelines," end quote, while simultaneously removing
16 the protections afforded by the pipeline utilities under
17 the Public Utility Confidential Security Information
18 Disclosure Protection Act.

19 Under current law, when a utility provides
20 confidential security information to an agency, the Public
21 Utility Confidential Security Information Disclosure
22 Protection Act allows the utility to designate utility
23 records maintained by the agency as confidential because
24 the disclosure of that information would, quote,
25 "compromise the security against sabotage or criminal or

1 terrorist acts of the nondisclosure which is necessary for
2 the protection of life, safety, public property, or public
3 utilities," end quote.

4 While the board and PennDOT would likely protect
5 the disclosure of property designated under the Right to
6 Know Law request, the bill seems to give the board
7 discretion to disseminate all utility information without
8 regard to the safety and confidentiality concerns.

9 Additionally, PennDOT would ask the Committee to
10 consider whether there are points that overlap that might
11 be clarified between the role of the Pennsylvania One Call
12 board, which is already active and familiar with the
13 operations, location, mapping of conventional underground
14 utilities and the board that would be created under this
15 bill.

16 The PA One Call board currently includes
17 Representatives from PennDOT, PEMA, PUC, local government,
18 utility owners already identified in House Bill 1568. The
19 PA One Call board meets quarterly and has established
20 subcommittees working on specific issues such as
21 compliance, education, mapping and technology, damage
22 prevention, local government, as well as organizational
23 support committees.

24 PennDOT believes it would be helpful to clarify
25 the types of pipelines covered by this bill to avoid

1 overlap with the role of the PA One Call and also clarify
2 the communication and information-sharing the board would
3 be doing and not duplicating efforts.

4 It is in the public interest to regulate the
5 location and construction of utility facilities and to
6 regulate the location, design, construction, maintenance,
7 and drainage of access driveways within the State highway
8 right-of-way for the purpose of security, ensuring that the
9 structural integrity of the highway, economy of
10 maintenance, preservation of proper drainage, and safe and
11 convenient passage of traffic and safe, reasonable access.
12 The primary focus is public safety.

13 We'd like to thank you for your time today, and
14 I'm available for any questions if you should have any.

15 MAJORITY CHAIRMAN BARRAR: Great. Thank you.
16 Questions from any of the Representatives?

17 Okay. Representative Comitta.

18 REPRESENTATIVE COMITTA: Thank you very much,
19 Mr. Chairman, and thank you, Mr. Division Chief,
20 Mr. Fleming, for your commitment to public safety, which
21 PennDOT of course is all about. And thank you for the
22 recommendations.

23 You know, clearly, what we've heard today, the
24 repeal of Act 156 is problematic. When the bill was being
25 initially written, there was some thought from people who

1 know about these things that with the Right to Know Law
2 that the Confidentiality Act was not needed and was perhaps
3 prohibiting dialogue that, you know, could be beneficial
4 among agencies and otherwise.

5 And the division between, distinction between
6 secure track and public track with information is certainly
7 under the Right to Know Law but is clear in the
8 Confidentiality Act, so it sounds as though -- well, let me
9 not put words in your mouth. Would you agree with the
10 thought that the act is important and necessary in
11 protecting public health and safety and secure information
12 for utilities and otherwise but also could benefit from
13 modernization, as was outlined by the PUC, for enhanced
14 communication, transparency, and so on?

15 MR. FLEMING: I believe that's correct. And I
16 think that's correct in a lot of ways. And we have an
17 older legislation that was established in the times that it
18 was, and things change rapidly and quickly. There's always
19 an opportunity to look at past legislation and make it more
20 applicable to today's current activities and also just
21 based on the changes in social nature and just how we
22 operate as a community --

23 REPRESENTATIVE COMITTA: Yes.

24 MR. FLEMING: -- definitely is different than
25 what it was when that was originally created. So, again,

1 with all those things in mind, I think that, yes, that it
2 would not be difficult or have any problem -- we could
3 definitely benefit from a review of the current
4 legislation.

5 REPRESENTATIVE COMITTA: And, in general, from
6 your experience with PennDOT and pipelines in general --
7 you made some very good recommendations that are in
8 addition to what we're talking about today -- do you think
9 that your work at PennDOT would be enhanced by
10 participation in a board of this nature? And adding the
11 Pennsylvania One Call was a great suggestion. I thought
12 that was -- thank you for that. What benefit would there
13 be for PennDOT to have ongoing overarching conversations
14 about pipeline safety relative to your mission?

15 MR. FLEMING: Well, first and foremost, and my
16 prior to being acting, I was in charge of the emergency and
17 incident management side, so we actually have a specific
18 designated confined space in PEMA that's just designed for
19 PEMA, for those interactions. So the interaction between
20 PennDOT and PEMA is pretty much a daily operation. I can't
21 tell you how often I talked to Director Padfield just on
22 all things of nature.

23 So having a direct interaction with this would
24 certainly benefit PennDOT because, A, we do have the
25 infrastructure. And in the emergency services world we are

1 in charge of what's called ESF 1, which is the emergency
2 support functions for transportation in that movement. And
3 that's what PennDOT's major primary concern is is that when
4 organizations come to PennDOT such as school districts and
5 identify these are our evacuation routes, does a pipeline
6 go underneath this or not? And, again, it goes back to our
7 highway occupancy permit laws and rules and regulations and
8 quite honestly outside of interstates.

9 The pipeline companies don't have to mark them.
10 They do have to get highway occupancy permits so that they
11 can -- when they open the road, that we make sure that
12 they're doing it in a safe and efficient manner and they
13 repair it so that it's not a Commonwealth burden to repair
14 their road structure. And that's how our highway occupancy
15 permits work.

16 But that overall -- you know, because we are ESF
17 1, and you don't usually call things number one unless it's
18 got some level of importance -- and transportation as a
19 whole is incredibly important.

20 REPRESENTATIVE COMITTA: Thank you, Mr. Chairman.

21 MAJORITY CHAIRMAN BARRAR: Great, thank you.

22 Chairman Sainato.

23 DEMOCRATIC CHAIRMAN SAINATO: Thank you,
24 Mr. Chairman.

25 I just have a question. With PennDOT and their

1 right-of-way, how much of it do they use for the pipeline?

2 MR. FLEMING: So I have to say that PennDOT's
3 right-of-way it varies depending on whether it's an
4 interstate system, whether it's on our rural network. Our
5 right-of-way really varies right down to the individual
6 property owner, which is why it's very difficult when we do
7 highway occupancy permits we have to physically go out and
8 look to see how much property our right-of-way entails.
9 And it goes back to a lot of different legislative things,
10 property ownership and things of that nature.

11 DEMOCRATIC CHAIRMAN SAINATO: All right.

12 MR. FLEMING: For the most part it's the
13 traveling surface, and I always use as a rule of thumb is
14 three feet past the white line on most transportation
15 networks. If we're on our interstate network, limited
16 access, it's a much larger footprint unless of course
17 you're on some of our -- like 78 is a little bit tighter
18 than 80 and the Schuylkill Expressway is the white line.
19 But for the most part three feet past that white line, on
20 our rural, it's three feet past the paved area on maybe our
21 interstates is a very safe -- so it's wherever that
22 pipeline crosses. And again, I think I --

23 DEMOCRATIC CHAIRMAN SAINATO: Do they pay you for
24 that?

25 MR. FLEMING: There's a fee structure for highway

1 occupancy permits to ensure that -- to pay for our review
2 that the -- and again, it's not so much about the pipeline.
3 For us it's about did they replace the highway structure
4 back to the proper way, and are they using proper and safe
5 methods of controlling that traffic when they open the
6 highway?

7 DEMOCRATIC CHAIRMAN SAINATO: I noticed -- you
8 know, because I travel the turnpike every week, and when a
9 lot of the pipeline was under construction, I could see
10 from the turnpike.

11 MR. FLEMING: Yes, very much so.

12 DEMOCRATIC CHAIRMAN SAINATO: I mean, it makes
13 sense to actually get the pipeline as close to the highway
14 as you can and, you know, keep it less on residential
15 property. And if you could utilize, you know, say, using
16 the example of the turnpike, okay, if there's space to do
17 it, I mean, I think that would make sense, or even like --

18 MR. FLEMING: Honestly, a lot of that comes back
19 down to the funding of those type of highways, so the
20 funding of those highways comes to the Federal Highway
21 Administration.

22 DEMOCRATIC CHAIRMAN SAINATO: Right.

23 MR. FLEMING: And for Pennsylvania I believe it's
24 over 400 billion is what --

25 DEMOCRATIC CHAIRMAN SAINATO: I was going to say

1 if it can help with them paying some of that, it helps with
2 our transportation needs.

3 MR. FLEMING: We just get into that argument.
4 The Federal Highway Administration has very specific rules
5 and regulations of what can and can't be within the
6 infrastructure of the larger networks.

7 DEMOCRATIC CHAIRMAN SAINATO: I'd just thought
8 that because, like I said, when I was driving and was
9 noticing this construction as it was being put in, I said,
10 oh, this is following the turnpike, and I said that's --

11 MR. FLEMING: It is in parts, yes.

12 DEMOCRATIC CHAIRMAN SAINATO: Okay. I just --

13 MR. FLEMING: Even though that they also rip them
14 up frequently. I'm also fortunate on a personal level of I
15 have Texas Eastern, the Spectra gas line, so I have three
16 3-foot diameter mains literally in my front yard. And I
17 would say every 15 to 20 years they rip them up and replace
18 them. So there is a lot of maintenance that goes with
19 this. They fly it frequently to make sure that it's not
20 leaking, and when it leaks, there's an assault team.
21 There's matter of fact a team above my house right now as
22 we speak maintaining it. So we prefer them not to be in
23 our right-of-way somebody because the amount of
24 construction activity they're doing on a regular basis just
25 to maintain those pipeline systems.

1 DEMOCRATIC CHAIRMAN SAINATO: All right. Thank
2 you.

3 MAJORITY CHAIRMAN BARRAR: Great, thank you.
4 Representative Gabler.

5 REPRESENTATIVE GABLER: Thank you, Mr. Chairman.
6 And thank you for the testimony.

7 I just wanted to make sure that I understand
8 current procedures as it pertains to confidential security
9 information. And so to make sure that I understand, under
10 the current law and under current procedures, PennDOT
11 possesses CSI and has procedures to manage and protect it,
12 correct?

13 MR. FLEMING: That is correct.

14 REPRESENTATIVE GABLER: How does it work with,
15 say, a highway occupancy permit? So if the location of a
16 given pipeline is to be protected but they have a highway
17 occupancy permit, would all of the paperwork related to
18 that highway occupancy permit then be considered CSI?

19 MR. FLEMING: Unfortunately, I'm going have to
20 answer with I have to refer that backed my chief counsel.

21 REPRESENTATIVE GABLER: Okay.

22 MR. FLEMING: While the highway occupancy permits
23 currently fall under my purview, all of my staff currently
24 don't deal with any of the Right to Know. That goes
25 straight through our Office of Chief Counsel when it comes

1 to highway occupancy permits. They manage that for us, so
2 any answers I would have for you, unfortunately, would be
3 inappropriate.

4 REPRESENTATIVE GABLER: Okay. Great. I think
5 the thing that I think is being highlighted by our
6 conversation today is that we need to try to calibrate our
7 conversations towards what does modernization look like of
8 our current laws? And so, you know, we've got the
9 questions about Right to Know Law, questions about the CSI
10 protection law, and also I guess I think that was very
11 insightful that we're also discussing One Call as well.

12 So I guess some of the questions that I would
13 have is just how does, for example, CSI and One Call
14 interact? Because the purpose of One Call is to make sure
15 everybody knows before they dig where something is, but
16 then the question becomes if we're trying to protect the
17 location of something against, say, terrorism, how do we --
18 I guess that's a current public policy question that I
19 don't have a good answer to is how do we balance the needs
20 of people needing to know before they dig versus us not
21 wanting everybody and their brother to know where certain
22 key pieces of infrastructure are? So I guess that's kind
23 of more of a 30,000-foot philosophical -- I don't know that
24 I really have --

25 MR. FLEMING: I unfortunately don't have a great

1 answer back even as a Director on the board. I would have
2 to say that that is a constant struggle of where is
3 security versus where's the safety of people working in and
4 around these facilities.

5 REPRESENTATIVE GABLER: So I guess to wrap it up
6 -- and I think that sometimes in public policy knowing the
7 right question to ask is the most important step to then
8 start moving in the right direction because we can arrive
9 at answers to these questions. And it sounds like from our
10 testimony that we've heard there's a need for modernization
11 of the current law, so then the question is how do we
12 monetize that balancing these very important public policy
13 imperatives?

14 So then the question that I would have for you,
15 sir, is could you speak to the need or the imperative from
16 PennDOT's perspective as far as what may be necessary as
17 far as information-sharing with other agencies, taking the
18 CSI question out of it as far as what we communicate to the
19 public because I think that's another separate issue that
20 gets a little hairy, but could you speak to PennDOT's need
21 to better communicate with, say, PEMA, PUC, or otherwise?
22 How does information-sharing currently work, and do you
23 think that a modernization of our current statute could
24 provide for better integration that would actually provide
25 for more efficient, more effective operations and

1 ultimately meeting the public policy goals that your agency
2 exists for?

3 MR. FLEMING: So I guess the best way I could
4 answer it is simply saying from my past experiences when we
5 do have a catastrophic or some type of an emergency event
6 that happens within the Commonwealth, all agencies have
7 some type of seating or a place of the table at PEMA, and
8 it's very specifically laid out. We do a lot of practicing
9 and a lot of back and forth with that and how we do that
10 communication. And we actually literally do it face-to-
11 face. And because transportation is important, we actually
12 have our own conference room, so we'll literally bring the
13 PUC representatives in and have that discussion face-to-
14 face. That's obviously the time when not having this "when
15 can we talk to about it and when can't we talk to you about
16 it" discussion can't happen.

17 Now, fortunately, as the PUC indicated earlier in
18 their testimony, they have some emergency concerns and some
19 ways to manage that with the CSI, so, ultimately, we've
20 been very fortunate. I can't think of a time in my 16
21 years that I've had to deal with a utility emergency like
22 this in Pennsylvania where we had any type of issues back
23 and forth or we had to have to worry about any
24 confidentiality in the emergency aspect.

25 As far as routine business, again, that comes

1 down to that planning and us working with our planning
2 partners of where utilities go across our highway network
3 and that infrastructure. So those are the concerns that we
4 have to look through and work on.

5 REPRESENTATIVE GABLER: And just a final follow-
6 up on that -- and you kind of alluded to it there -- so in
7 the event of an emergency you've got PEMA, you got a
8 conference room, you've got the face-to-face interaction,
9 and at that point it's handle the emergency. But prior to
10 that emergency, can you envision that there is information
11 or data that's not being shared that would be better if
12 shared among agencies in a planning effort?

13 MR. FLEMING: I'd have to say that there is
14 definitely -- in the planning effort, having as much
15 information as possible is always better than trying to
16 plan something and finding out after you've got it
17 accomplished it can't be accomplished because of one part.
18 So, again, I think from just that true aspect of having as
19 many pieces available so it doesn't fall apart at the end
20 is probably very beneficial.

21 REPRESENTATIVE GABLER: I appreciate it. Thank
22 you.

23 MAJORITY CHAIRMAN BARRAR: Representative Quinn.

24 REPRESENTATIVE QUINN: Thank you, Mr. Fleming,
25 for being here today. And obviously, having the

1 information in advance I think is where we're at as far as
2 the crux of this bill.

3 Unfortunately, in my district there was a small
4 incident. Fortunately, the line wasn't active, but there
5 was a digging situation where a backhoe struck and inactive
6 Mariner East line that was going down 452 close to Glenwood
7 Elementary School. So obviously, that's one of the reasons
8 for the specific piece of legislation that we're trying to
9 get all parties at the table so everyone has more
10 information. Obviously, if the line had been active, it
11 may have become a catastrophic situation.

12 I guess my question to you is if this legislation
13 doesn't proceed, how would you propose solving the
14 information or I should say the lack of information that we
15 have? Would it be to address it by going back at Act 156
16 or is there some other vehicle that you would propose? Do
17 I have the right number, Act 156?

18 REPRESENTATIVE COMITTA: Yes.

19 MR. FLEMING: Honestly, I hadn't put a lot of
20 thought into that specific question, so I'm not so sure
21 that I could actually answer you with this is how I believe
22 that PennDOT would like to see that. I would certainly
23 have to take some time to think about that. I apologize
24 for being elusive on that, but honestly, there are a lot of
25 things that we could think about as far as having that

1 information available, but where it's actionable, how it's
2 actionable from a PA One Call standpoint, obviously, we
3 would never want to see a line strike. And that's where
4 the PUC is at, and that's why Act 50 was created to repeal
5 the former One Call act so that it made it stronger. It
6 put penalties in place. It made the PUC the folks to stand
7 out. And I think that, as far as a line strike action, was
8 probably the best thing that can happen, and that's only
9 been an act since April.

10 So with that act starting in April, it is amazing
11 how we've seen a turnaround even within PennDOT and what we
12 thought we could and couldn't do. Now that there's a lot
13 of formality to that, we have certainly appreciated that.
14 And I think that things are made to change.

15 So, ultimately, the proposal of this act, as we
16 identified in our testimony, we think is important because,
17 as we said, planning partners are huge. And seeing how
18 things start to finish, but also that continued
19 construction maintenance and then ongoing maintenance of
20 those facilities, there will always be somebody digging
21 somewhere around a road. That's just the way it is. So
22 having as much information available to share is possible.
23 We would certainly be in favor of that.

24 REPRESENTATIVE QUINN: No, that sounds great.
25 Thank you. Obviously, we're trying to be proactive as

1 well, so thank you very much for your testimony.

2 MAJORITY CHAIRMAN BARRAR: Thank you.

3 Representative Gillen.

4 REPRESENTATIVE GILLEN: Just a brief question.

5 How have recent weather events -- we've had some very
6 profound storms impacted in terms of drainage, compounding
7 the disturbance that was already going on. Have you seen
8 any integrity of highway issues that intersected directly
9 with pipeline construction?

10 MR. FLEMING: Based specifically on washouts and
11 things of that nature, we have not. Again, most of those
12 are typically addressed through DEP when we get to the soil
13 conservation. We start to address them when they, A,
14 encroach on our right-of-way; and B, actually deteriorate
15 the roadway network. And at the present time natural gas
16 pipelines, no. We have seen some where we've had some
17 gasoline pipelines that were under streams that were
18 compromised, which caused us some delay in responding to
19 some bridge outages because of the gasoline in the water at
20 the time, and that was a several years ago. That was an
21 event that happened.

22 REPRESENTATIVE GILLEN: And finally, do you have
23 the resources to fulfill your mission both in personnel,
24 men, materials, et cetera?

25 MR. FLEMING: Well, I can speak for myself and

1 being on several committees that are nationwide-oriented.
2 I don't know if there's a DOT out there that can say we're
3 flush with people. We can always use more people. There
4 will always be some type of malady to the roadway network
5 that we simply either can't afford to get to through
6 contract or work through with our department forces because
7 there are just -- well, there's more potholes than people.
8 And we are in an infrastructure that that happens depending
9 on the winter. So we would always appreciate having more
10 resources and being able to fulfill all of our resources.

11 MAJORITY CHAIRMAN BARRAR: Okay. Thank you. Mr.
12 Fleming, thank you for being here and for your testimony
13 today. We greatly appreciate it. And I think there were a
14 few questions that you had that you couldn't answer. If
15 you find any information, you can forward it to our
16 Committee, and we'll get it out to the Representatives.

17 MR. FLEMING: Okay. Thank you very much.

18 MAJORITY CHAIRMAN BARRAR: Okay? I'm going to
19 recognize Representative Comitta. She wanted to make a
20 final statement on the hearing.

21 REPRESENTATIVE COMITTA: Thank you so much,
22 Chairman Barrar and Chairman Sainato and Members of the
23 Committee and testifiers and everyone who's with us today.
24 I really appreciate the opportunity to address the number
25 one importance of public safety and everything that we do

1 and today in particular regarding specifically natural gas
2 liquids pipelines.

3 A couple of sort of next steps or takeaways that
4 we heard that I just wanted to put before the Committee and
5 for consideration of all, and before I do that, I had
6 mentioned that the industry -- in particular, energy
7 transfer -- had been lacking in communication, which has
8 been quite true. But I did want to just take a moment and
9 say that that has improved significantly recently, and I
10 just wanted to say how much we all appreciate the
11 opportunity to have effective communication with the
12 industry, so I wanted to make sure I got that in and shared
13 my appreciation.

14 So a couple things that stood out to me, one is
15 that communication regarding a specific emergency and
16 emergency response to that incident, that communication
17 seems to be moving along pretty good. People are not
18 saying I can't tell you anything about that. They're
19 saying we've got everything you need, here you go, here's
20 how we're going to solve the problem.

21 Where the communication seems to not be happening
22 is at the level where we looking at how do we improve
23 emergency response planning, how do we address -- as my
24 colleague said, the world is changing rapidly. What are
25 some new considerations that should go into our emergency

1 response planning? So they may be happening at the agency
2 level but are perhaps not happening at an interagency or
3 multi-stakeholder level. And that is where our bill would
4 provide an opportunity, indeed, a requirement for such
5 conversations.

6 I think that we also have heard that repealing
7 the Confidentiality Act is probably not the best remedy,
8 that amending the Confidentiality Act with a number of
9 things that we heard today, and that maybe something that
10 this Committee wants to look into. And I would
11 certainly -- I think Representative Quinn and I would be
12 very interested in talking about that. And specifically
13 Bob Young's comments -- Bob Young of the PUC, for Act 156
14 reform, make a mechanism for the sharing to occur and
15 specifically allow discussion between agencies. The act
16 needs to remove the roadblocks that currently are there or
17 are interpreted to be there to important conversation.

18 And then I think we also heard some good
19 suggestions for amendments to this bill to make it stronger
20 and function more effectively. One was an idea of having
21 an executive board or committee as part of the board that
22 could meet and discuss sensitive information that might not
23 be appropriately discussed among the entire board,
24 including the public, but that would inform full board and
25 public discussion and public safety practices.

1 And then another amendment talking about the
2 definition of pipelines and amending the definition of
3 pipelines, perhaps striking out non-gas liquids and
4 inserting hazardous liquids because, as we've said, the
5 major concern is dealing with natural gas liquids.

6 And another item for this board in its
7 overarching discussions of public safety, to take a look at
8 legislative gaps and make recommendations for legislation
9 that would help improve pipeline safety. And I'm sure
10 there are others, but those are my takeaways.

11 So this was very, very helpful on many levels and
12 certainly to help improve the overarching goal to protect
13 public safety along the natural gas liquids pipelines in
14 Pennsylvania and to improve communication as a very
15 important tool to that end.

16 So again, thank you, Mr. Chairman and
17 Mr. Chairman, and all who are here.

18 MAJORITY CHAIRMAN BARRAR: Thank you, everyone.
19 I want to thank all of our panelists for participating
20 today. We heard some excellent testimony on House Bill
21 1568. I'm sure there's a lot of work left to do on this
22 bill, and we'll be having an additional hearing hopefully
23 before the end of year.

24 Chairman Sainato, any closing remarks?

25 DEMOCRATIC CHAIRMAN SAINATO: Okay. I'd just

1 like to thank the testifiers as well. I think it's
2 important, you know, when you have subjects such as this to
3 listen. And, you know, nothing is easy. I think everyone
4 agrees about public safety from the industry to the
5 government. I think we're all on the same page, want to
6 make sure it's done properly. And you have a product that
7 you've got to get to market. I mean, that's something that
8 -- you know, that's a big issue for Pennsylvania as well.

9 So, as Chairman Barrar said, we need to move
10 forward with this further, listen to the stakeholders, try
11 to come up with something. But I thought the testifiers
12 today really shed some light on this issue because some
13 things aren't always just cut and dried. Like yesterday's
14 hearing and today, that's what's so valuable about these
15 Committee hearings, which we have.

16 And I appreciate the Members for coming this
17 week. And I know, you know, we have a very large number
18 that came to listen, so I think you got a lot out of it.
19 And we will move forward working with Chairman Barrar and,
20 like I said, get the PUC in as well because I think they
21 made some very good ideas and suggestions and some things
22 that most people wouldn't have thought about. Public
23 safety and, you know, security is very critical for our
24 infrastructure.

25 When you're dealing with these things,

1 especially, you know, with the cybersecurity that's out
2 there -- I had an opportunity on Monday to be up in Erie
3 with our Policy Committee, and they were dealing with
4 cybersecurity. And they're actually recruiting people for
5 this field. And they had a map and they were showing --
6 you know, it's in instant time the potential of people from
7 -- not in our country but other countries that are trying
8 to tap in and cause chaos.

9 And it's like this is -- you know, it was eye-
10 opening, and I think it correlates with what we're talking
11 about here as well as far as we don't need foreign
12 governments or anyone else, you know, to have access to
13 that information, but we also have a public right to do it,
14 too. So I think these are things that we have to look at.
15 So thank you, everyone, for coming.

16 MAJORITY CHAIRMAN BARRAR: Okay. Thank you.
17 Real quick.

18 REPRESENTATIVE COMITTA: Permit me to also
19 express my thanks to my colleague, Representative Quinn,
20 for being the prime cosponsor and working so strongly
21 together with pipeline safety. Thank you.

22 MAJORITY CHAIRMAN BARRAR: Great. This hearing
23 is adjourned. Thank you.

24

25

(The hearing concluded at 12:23 p.m.)

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2 are a true and accurate transcription produced from audio
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