

**AMENDMENT TO H.R. 1938, AS REPORTED
OFFERED BY MR. HASTINGS OF FLORIDA**

Page 7, after line 23, insert the following new sub-
section:

1 (e) ELEMENTS OF LIABILITY.—

2 (1) IN GENERAL.—Notwithstanding any other
3 provision or rule of law, and subject to the provi-
4 sions of this Act, the owner of the Keystone XL
5 pipeline is liable for the removal costs and damages
6 specified in paragraph (2) that result from a dis-
7 charge or threat of discharge from that pipeline.

8 (2) COVERED REMOVAL COSTS AND DAM-
9 AGES.—

10 (A) REMOVAL COSTS.—The removal costs
11 referred to in paragraph (1) are—

12 (i) all removal costs incurred by the
13 United States, a State, or an Indian tribe
14 under subsection (c), (d), (e), or (l) of sec-
15 tion 311 of the Federal Water Pollution
16 Control Act (33 U.S.C. 1321), under the
17 Intervention on the High Seas Act (33
18 U.S.C. 1471 et seq.), or under State law;
19 and

1 (ii) any removal costs incurred by any
2 person for acts taken by the person which
3 are consistent with the National Contingency
4 Plan.

5 (B) DAMAGES.—The damages referred to
6 in paragraph (1) are the following:

7 (i) NATURAL RESOURCES.—Damages
8 for injury to, destruction of, loss of, or loss
9 of use of, natural resources, including the
10 reasonable costs of assessing the damage,
11 which shall be recoverable by a United
12 States trustee, a State trustee, an Indian
13 tribe trustee, or a foreign trustee.

14 (ii) REAL OR PERSONAL PROPERTY.—
15 Damages for injury to, or economic losses
16 resulting from destruction of, real or personal
17 property, which shall be recoverable
18 by a claimant who owns or leases that
19 property.

20 (iii) SUBSISTENCE USE.—Damages
21 for loss of subsistence use of natural re-
22 sources, which shall be recoverable by any
23 claimant who so uses natural resources
24 which have been injured, destroyed, or lost,

1 without regard to the ownership or man-
2 agement of the resources.

3 (iv) REVENUES.—Damages equal to
4 the net loss of taxes, royalties, rents, fees,
5 or net profit shares due to the injury, de-
6 struction, or loss of real property, personal
7 property, or natural resources, which shall
8 be recoverable by the Government of the
9 United States, a State, or a political sub-
10 division thereof.

11 (v) PROFITS AND EARNING CAPAC-
12 ITY.—Damages equal to the loss of profits
13 or impairment of earning capacity due to
14 the injury, destruction, or loss of real prop-
15 erty, personal property, or natural re-
16 sources, which shall be recoverable by any
17 claimant.

18 (vi) PUBLIC SERVICES.—Damages for
19 net costs of providing increased or addi-
20 tional public services during or after re-
21 moval activities, including protection from
22 fire, safety, or health hazards, caused by a
23 discharge of oil, which shall be recoverable
24 by a State, or a political subdivision of a
25 State.

1 (3) EXCLUDED DISCHARGES.—This subsection
2 does not apply to any discharge permitted by a per-
3 mit issued under Federal, State, or local law.

4 (4) LIABILITY OF THIRD PARTIES.—

5 (A) IN GENERAL.—

6 (i) THIRD PARTY TREATED AS RE-
7 SPONSIBLE PARTY.—Except as provided in
8 clause (ii), in any case in which a respon-
9 sible party establishes that a discharge or
10 threat of a discharge and the resulting re-
11 moval costs and damages were caused sole-
12 ly by an act or omission of one or more
13 third parties described in section
14 1003(a)(3) of the Oil Pollution Act of
15 1990 (or solely by such an act or omission
16 in combination with an act of God or an
17 act of war), the third party or parties shall
18 be treated as the responsible party or par-
19 ties for purposes of determining liability
20 under this subsection.

21 (ii) SUBROGATION OF RESPONSIBLE
22 PARTY.—If the responsible party alleges
23 that the discharge or threat of a discharge
24 was caused solely by an act or omission of
25 a third party, the responsible party—

1 (I) in accordance with section
2 1013 of the Oil Pollution Act of 1990,
3 shall pay removal costs and damages
4 to any claimant; and

5 (II) shall be entitled by subroga-
6 tion to all rights of the United States
7 Government and the claimant to re-
8 cover removal costs or damages from
9 the third party paid under this sub-
10 section.

11 (B) LIMITATION APPLIED.—

12 (i) OWNER OR OPERATOR OF VESSEL
13 OR FACILITY.—If the act or omission of a
14 third party that causes an incident occurs
15 in connection with a vessel or facility
16 owned or operated by the third party, the
17 liability of the third party shall be subject
18 to the limits provided in section 1004 of
19 the Oil Pollution Act of 1990 as applied
20 with respect to the vessel or facility.

21 (ii) OTHER CASES.—In any other
22 case, the liability of a third party or par-
23 ties shall not exceed the limitation which
24 would have been applicable to the respon-
25 sible party of the vessel or facility from

1 which the discharge actually occurred if
2 the responsible party were liable.

