

116TH CONGRESS
2D SESSION

S. 4502

To amend the Natural Gas Act to bolster fairness and transparency in the consideration of interstate natural gas pipeline permits, to provide for greater public input opportunities in the natural gas pipeline permitting process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2020

Mr. KAINE (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Natural Gas Act to bolster fairness and transparency in the consideration of interstate natural gas pipeline permits, to provide for greater public input opportunities in the natural gas pipeline permitting process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pipeline Fairness,
5 Transparency, and Responsible Development Act of
6 2020”.

1 **SEC. 2. NOTICE TO AFFECTED LANDOWNERS.**

2 (a) INITIAL NOTICE.—Section 7(d) of the Natural
3 Gas Act (15 U.S.C. 717f(d)) is amended—

4 (1) by striking the subsection designation and
5 all that follows through “Application for certificates”
6 and inserting the following:

7 “(d) APPLICATION FOR CERTIFICATE OF PUBLIC
8 CONVENIENCE AND NECESSITY.—

9 “(1) IN GENERAL.—Subject to paragraph (2),
10 an application for a certificate”; and

11 (2) by adding at the end the following:

12 “(2) REQUIREMENTS.—

13 “(A) APPLICATION.—An application for a
14 certificate of public convenience and necessity
15 under paragraph (1) shall include—

16 “(i) the name and address of each in-
17 terested party on whom the applicant is re-
18 quired to serve notice of the application
19 under that paragraph; and

20 “(ii) a copy of the notice proposed to
21 be served on each interested party under
22 that paragraph.

23 “(B) NOTICE.—

24 “(i) IN GENERAL.—A notice served on
25 an interested party under paragraph (1)
26 shall include—

1 “(I) a description of the pro-
2 ceeding before the Commission relat-
3 ing to the application for a certificate
4 of public convenience and necessity;

5 “(II) complete instructions on
6 how the interested party can move to
7 intervene in the proceeding described
8 in the notice, including instructions on
9 how to intervene—

10 “(aa) electronically; and

11 “(bb) through a paper filing;

12 “(III) a clear statement of the
13 contents required to be included in a
14 motion to intervene in the proceeding
15 described in the notice;

16 “(IV) the deadline for the inter-
17 ested party to move to intervene in
18 the proceeding described in the notice;
19 and

20 “(V) a section, separated from
21 the remaining text of the notice and
22 clearly displayed in bold print, inform-
23 ing the interested party that—

24 “(aa) in order to preserve
25 the right to seek judicial review

1 of a decision by the Commission
2 relating to the certificate of pub-
3 lic convenience and necessity, the
4 interested party must intervene
5 in the proceeding described in the
6 notice; and

7 “(bb) intervention in the
8 proceeding described in the notice
9 is the only way to preserve the
10 right to judicial review described
11 in item (aa).

12 “(ii) REVIEW.—The Commission
13 shall—

14 “(I) review each notice submitted
15 to the Commission under subpara-
16 graph (A)(ii) to determine whether
17 the notice meets the requirements de-
18 scribed in clause (i); and

19 “(II) approve the notice only if
20 the notice meets those requirements.

21 “(iii) SERVICE.—

22 “(I) IN GENERAL.—An applicant
23 may not serve notice on an interested
24 party under paragraph (1) unless the

1 notice has been approved by the Com-
2 mission under clause (ii).

3 “(II) DEADLINE.—A notice
4 under paragraph (1) shall be served
5 on an interested party not less than
6 60 days before the last day on which
7 the interested party may intervene in
8 the proceeding described in the notice.

9 “(C) PUBLIC AVAILABILITY OF INFORMA-
10 TION RELATING TO INTERESTED PARTIES.—On
11 request of any person, the Commission shall
12 disclose the names and addresses submitted to
13 the Commission under subparagraph (A)(i),
14 subject to such reasonable terms and conditions
15 as the Commission determines to be appro-
16 priate.”.

17 (b) SUBSEQUENT NOTICE.—Section 7(e) of the Nat-
18 ural Gas Act (15 U.S.C. 717f(e)) is amended—

19 (1) by striking the subsection designation and
20 all that follows through “of this section,” in the first
21 sentence and inserting the following:

22 “(e) ISSUANCE OF CERTIFICATE.—

23 “(1) IN GENERAL.—Except in the cases gov-
24 erned by the provisos in subparagraphs (A) and (B)

1 of subsection (c)(1), and subject to paragraphs (2)
 2 through (4),”;

3 (2) in paragraph (1) (as so designated), by
 4 striking “necessity; otherwise” in the first sentence
 5 and all that follows through “The Commission” in
 6 the second sentence and inserting the following: “ne-
 7 cessity.

8 “(2) REQUIREMENT.—The Commission shall
 9 deny any application for which the Commission has
 10 not made the findings described in paragraph (1).

11 “(3) TERMS AND CONDITIONS.—The Commis-
 12 sion”; and

13 (3) by adding at the end the following:

14 “(4) NOTICE OF ISSUANCE.—

15 “(A) IN GENERAL.—On issuance of a cer-
 16 tificate of public convenience and necessity by
 17 the Commission, the applicant requesting the
 18 certificate shall provide to each interested party
 19 on whom the applicant served notice of the ap-
 20 plication under subsection (d) a notice of the
 21 issuance of the certificate.

22 “(B) REQUIREMENTS.—Each notice under
 23 subparagraph (A) shall include—

1 “(i) complete instructions on how the
 2 recipient of the notice may apply for a re-
 3 hearing before the Commission;

4 “(ii) a clear statement of the contents
 5 required to be included in an application
 6 for a rehearing before the Commission;

7 “(iii) the deadline for the recipient to
 8 file that application;

9 “(iv) the time period for seeking judi-
 10 cial review of a decision of the Commission
 11 on an application for rehearing;

12 “(v) a statement informing the recipi-
 13 ent that judicial review will not be avail-
 14 able with respect to a decision of the Com-
 15 mission on any issue for which the recipi-
 16 ent has not sought rehearing before the
 17 Commission; and

18 “(vi) a clear reference to—

19 “(I) subsections (a) and (b) of
 20 section 19; and

21 “(II) any rules issued under
 22 those subsections relating to the time
 23 or manner of seeking—

24 “(aa) a rehearing before the
 25 Commission; or

1 “(bb) judicial review of a de-
 2 cision of the Commission under
 3 this section, including any deci-
 4 sion on a rehearing.

5 “(C) EFFECT OF NOTICE.—A court may
 6 not grant a petition for eminent domain under
 7 subsection (h) with respect to any property cov-
 8 ered by the applicable certificate of public con-
 9 venience and necessity issued under this sub-
 10 section unless the holder of the certificate has
 11 provided notice under this paragraph to each
 12 interested party described in subparagraph
 13 (A).”.

14 **SEC. 3. CONDITIONED CERTIFICATES.**

15 Section 7(e) of the Natural Gas Act (15 U.S.C.
 16 717f(e)) (as amended by section 2(b)) is amended by add-
 17 ing at the end the following:

18 “(5) RESTRICTIONS.—

19 “(A) EMINENT DOMAIN.—

20 “(i) COMMENCEMENT OF ACTION.—A
 21 holder of a certificate of public convenience
 22 and necessity may not commence an action
 23 under subsection (h) until the earliest date
 24 on which all timely applications for rehear-
 25 ing under section 19(a)—

1 “(I) have received a ruling on the
 2 merits by the Commission under that
 3 section; or

4 “(II) have been deemed denied
 5 under paragraph (3)(B)(i) of that sec-
 6 tion.

7 “(ii) RULING ON PETITION.—A court
 8 may not grant a petition for eminent do-
 9 main under subsection (h) with respect to
 10 any property covered by the applicable cer-
 11 tificate of public convenience and necessity
 12 if the holder of that certificate has not re-
 13 ceived all required certifications, authoriza-
 14 tions, approvals, permits, or other permis-
 15 sions from Federal or State agencies nec-
 16 essary—

17 “(I) to begin construction; and

18 “(II) to complete the entire
 19 project for which the certificate was
 20 issued.

21 “(B) CONSTRUCTION.—The holder of a
 22 certificate of public convenience and necessity
 23 may not begin construction under that certifi-
 24 cate until the later of—

1 “(i) the earliest date on which the
 2 holder has received all required certifi-
 3 cations, authorizations, approvals, permits,
 4 or other permissions described in subpara-
 5 graph (A)(ii); and

6 “(ii) the earliest date on which all
 7 timely applications for rehearing under
 8 section 19(a)—

9 “(I) have received a ruling on the
 10 merits by the Commission under that
 11 section; or

12 “(II) have been deemed denied
 13 under paragraph (3)(B)(i) of that sec-
 14 tion.”.

15 **SEC. 4. EMINENT DOMAIN.**

16 (a) STATEMENT OF POLICY.—With respect to the
 17 construction and operation of natural gas pipelines, it is
 18 the policy of the United States to protect the rights of
 19 citizens of the United States to their private property, in-
 20 cluding by limiting the taking of private property by the
 21 Federal Government to situations in which the taking is
 22 for public use, with just compensation, and required by
 23 the public convenience and necessity, and not merely to
 24 advance the economic interests of private parties that
 25 would be given ownership or use of the property taken.

1 (b) JUST COMPENSATION.—Section 7(h) of the Nat-
 2 ural Gas Act (15 U.S.C. 717f(h)) is amended—

3 (1) by striking the subsection designation and
 4 all that follows through “When any holder” in the
 5 first sentence and inserting the following:

6 “(h) EMINENT DOMAIN.—

7 “(1) IN GENERAL.—When any holder”;

8 (2) in paragraph (1) (as so designated), in the
 9 second sentence—

10 (A) by striking “The practice” and insert-
 11 ing the following:

12 “(2) PRACTICE AND PROCEDURE.—

13 “(A) IN GENERAL.—Subject to subpara-
 14 graph (B), the practice”;

15 (3) in paragraph (2)(A) (as so designated), by
 16 striking “situated: Provided, That the” and insert-
 17 ing the following “situated.

18 “(B) LIMITATION.—The”; and

19 (4) by adding at the end the following:

20 “(3) JUST COMPENSATION.—

21 “(A) DEFINITION OF LOST CONSERVATION
 22 VALUE.—In this paragraph, the term ‘lost con-
 23 servation value’ means—

24 “(i) the value of any use of land for
 25 conservation purposes (as defined in sec-

tion 1.170A–14(d) of title 26, Code of Federal Regulations (or a successor regulation)) that is interrupted or prevented by the exercise of the right of eminent domain under paragraph (1);

“(ii) any decrease in the value of land due to the interruption or prevention of a use described in clause (i); and

“(iii) any lost benefit or decrease in the value of a benefit due to the interruption or prevention of a use described in clause (i).

“(B) LAND SUBJECT TO A CONSERVATION EASEMENT.—In determining the just compensation for property acquired by the exercise of the right of eminent domain under paragraph (1), in the case of land subject to a conservation easement, the court with jurisdiction over the proceeding shall consider the lost conservation value of that land.”.

SEC. 5. APPRAISALS, OFFERS OF COMPENSATION, AND POSSESSION.

Section 7(h) of the Natural Gas Act (15 U.S.C. 717f(h)) (as amended by section 4(b)) is amended by adding at the end the following:

1 “(4) APPRAISALS AND OFFERS OF COMPENSA-
2 TION.—

3 “(A) APPRAISALS.—

4 “(i) IN GENERAL.—The holder of a
5 certificate of public convenience and neces-
6 sity shall have the property covered by the
7 certificate appraised in accordance with
8 generally accepted appraisal standards.

9 “(ii) REQUIREMENT.—The owner of
10 the applicable property (or a designated
11 representative of the owner) shall be given
12 the opportunity to accompany the ap-
13 praiser during any inspection of the prop-
14 erty that is part of an appraisal under
15 clause (i).

16 “(iii) TIMING.—An appraisal under
17 clause (i) shall be carried out before the
18 holder of the certificate of public conven-
19 ience and necessity makes an offer of com-
20 pensation to the owner of the applicable
21 property.

22 “(B) OFFERS OF COMPENSATION.—Any
23 offer of compensation made to an owner of
24 property that is covered by a certificate of pub-
25 lic convenience and necessity—

1 “(i) shall be made in writing;

2 “(ii) may not be for an amount less
3 than the fair market value of the property,
4 as determined by an appraisal carried out
5 under subparagraph (A); and

6 “(iii) shall include damages to any
7 property of the owner that is adjacent to
8 the property covered by the certificate.

9 “(5) JUDICIAL REVIEW OF EMINENT DOMAIN
10 PETITION.—No court shall have jurisdiction to re-
11 view a petition for eminent domain under this sub-
12 section unless—

13 “(A) an appraisal has been carried out in
14 accordance with subparagraph (A) of paragraph
15 (4); and

16 “(B) the holder of the certificate of public
17 convenience and necessity has made an offer of
18 compensation to the owner of the applicable
19 property in accordance with subparagraph (B)
20 of that paragraph.

21 “(6) RIGHT OF POSSESSION.—An owner of
22 property covered by a certificate of public conven-
23 ience and necessity shall not be required to sur-
24 render possession of the property unless the holder
25 of the certificate—

1 “(A) has paid to the owner the agreed pur-
2 chase price; or

3 “(B) has deposited with the applicable
4 court the amount of the award of compensation
5 in the condemnation proceeding for the prop-
6 erty.”.

7 **SEC. 6. PROCESS COORDINATION FOR ENVIRONMENTAL**
8 **REVIEW.**

9 Section 15 of the Natural Gas Act (15 U.S.C. 717n)
10 is amended by adding at the end the following:

11 “(g) ENVIRONMENTAL REVIEW FOR INTERSTATE
12 NATURAL GAS PIPELINES.—

13 “(1) DEFINITIONS.—In this subsection:

14 “(A) FEDERAL AUTHORIZATION.—

15 “(i) IN GENERAL.—The term ‘Federal
16 authorization’ means any authorization re-
17 quired under Federal law with respect to
18 an application for a certificate of public
19 convenience and necessity under section 7.

20 “(ii) INCLUSIONS.—The term ‘Federal
21 authorization’ includes any permits, special
22 use authorizations, certifications, opinions,
23 or other approvals as may be required
24 under Federal law with respect to an appli-

1 cation for a certificate of public conven-
2 ience and necessity under section 7.

3 “(B) PROJECT.—The term ‘project’ means
4 a project for the construction or extension of fa-
5 cilities for the transportation in interstate com-
6 merce of natural gas that requires Federal au-
7 thorization.

8 “(2) PROGRAMMATIC ENVIRONMENTAL IMPACT
9 STATEMENTS.—In considering an application for
10 Federal authorization for a project in a State, if,
11 during the 1-year period beginning on the date on
12 which the application is filed, an application for Fed-
13 eral authorization for a separate project is filed, and
14 that project is located in the same State and within
15 100 miles of the first project, the Commission shall
16 consider both projects to be 1 project for purposes
17 of complying with the National Environmental Pol-
18 icy Act of 1969 (42 U.S.C. 4321 et seq.).

19 “(3) SUPPLEMENTAL ENVIRONMENTAL IMPACT
20 STATEMENTS.—

21 “(A) IN GENERAL.—If the Commission de-
22 termines that comments submitted in response
23 to a draft environmental impact statement pre-
24 pared with respect to an application for Federal
25 authorization raise issues that exceed the initial

1 scope of the draft environmental impact state-
2 ment, a supplemental environmental impact
3 statement shall be prepared for the project.

4 “(B) MITIGATION PLANS.—If a draft envi-
5 ronmental impact statement prepared with re-
6 spect to an application for Federal authoriza-
7 tion does not include information about mitiga-
8 tion plans for adverse impacts that cannot rea-
9 sonably be avoided, a supplemental environ-
10 mental impact statement shall be prepared that
11 includes that information.

12 “(4) PUBLIC MEETING REQUIREMENTS.—In
13 complying with the National Environmental Policy
14 Act of 1969 (42 U.S.C. 4321 et seq.) with respect
15 to an application for Federal authorization, the
16 Commission shall ensure that any public meeting
17 shall be held—

18 “(A) in each county or equivalent subdivi-
19 sion in which the project will be located; and

20 “(B) during each period of public comment
21 preceding, if applicable, publication of—

22 “(i) a draft environmental impact
23 statement;

24 “(ii) a final environmental impact
25 statement; and

1 “(iii) any supplemental environmental
2 impact statement.”.

3 **SEC. 7. IMPACTS ON CRITICAL NATURAL RESOURCES.**

4 Subsection (g) of section 15 of the Natural Gas Act
5 (15 U.S.C. 717n) (as added by section 6) is amended by
6 adding at the end the following:

7 “(5) NATIONAL SCENIC TRAILS.—

8 “(A) IN GENERAL.—In preparing an envi-
9 ronmental impact statement with respect to an
10 application for Federal authorization for a
11 project, any evaluation of the visual impacts of
12 the project on a national scenic trail designated
13 by the National Trails System Act (16 U.S.C.
14 1241 et seq.) in the environmental impact
15 statement shall—

16 “(i) consider the cumulative visual im-
17 pacts of any similar proposed project—

18 “(I) for which an application for
19 Federal authorization is in the pre-fil-
20 ing or filing stage; and

21 “(II) that impacts the same na-
22 tional scenic trail within 100 miles of
23 the first project; and

24 “(ii) include visual impact simulations
25 depicting leaf-on and leaf-off views at each

location where major visual impacts occur,
 as identified, authenticated, and justified
 during the period of public comment pre-
 ceding the publication of a draft environ-
 mental impact statement by the head of
 the Federal agency or independent agency
 administering the land at the applicable lo-
 cation.

“(B) NATIONAL FOREST MANAGEMENT
 PLANS.—No amendment to a National Forest
 management plan under the Forest and Range-
 land Renewable Resources Planning Act of
 1974 (16 U.S.C. 1600 et seq.) shall be consid-
 ered if the result of the amendment represents
 net degradation to the resources of a national
 scenic trail designated by the National Trails
 System Act (16 U.S.C. 1241 et seq.).”.

SEC. 8. JUDICIAL REVIEW.

Section 19(a) of the Natural Gas Act (15 U.S.C.
 717r(a)) is amended—

(1) in the sixth sentence, by striking “Until the
 record” and inserting the following:

“(5) POWERS OF THE COMMISSION.—Until the
 record”;

(2) in the fifth sentence, by striking “No proceeding” and inserting the following:

“(4) APPLICATION REQUIRED FOR JUDICIAL REVIEW.—No proceeding”;

(3) by striking the fourth sentence and inserting the following:

“(B) EFFECT OF FAILURE TO TIMELY RULE ON THE MERITS.—

“(i) IN GENERAL.—If the Commission has not ruled on the merits of an application for rehearing under this subsection by the date that is 45 days after the date on which the application is filed with the Commission, the application shall be deemed denied on that date.

“(ii) ORDERS GRANTING REHEARING FOR FURTHER CONSIDERATION.—For purposes of clause (i), an order granting an application for rehearing solely for the purpose of further considering the issues raised in the application shall not be considered to be a ruling on the merits of the application.

“(iii) JUDICIAL REVIEW.—An application that is deemed denied under clause (i)

1 may be reviewed by a court of appeals of
2 the United States in accordance with sub-
3 section (b).”;

4 (4) in the third sentence, by striking “Upon
5 such application” and inserting the following:

6 “(3) DECISION ON APPLICATION.—

7 “(A) IN GENERAL.—On an application for
8 rehearing under this subsection,”;

9 (5) in the second sentence, by striking “The ap-
10 plication” and inserting the following:

11 “(2) CONTENTS.—An application”; and

12 (6) by striking the subsection designation and
13 all that follows through “Any person” in the first
14 sentence and inserting the following:

15 “(a) APPLICATION FOR REHEARING.—

16 “(1) IN GENERAL.—Any person”.

○