

117TH CONGRESS
2D SESSION

S. 4864

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

SEPTEMBER 15, 2022

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 2022”.

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 Commission or
18 the applicant is required to serve notice of
19 the application 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 the following:

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 which shall include the following
6 statement:

7 “‘If the applicant ([name of appli-
8 cant]) wants to build the pipeline on
9 property that you own, and the Com-
10 mission issues the requested certifi-
11 cate of public convenience and neces-
12 sity, then the applicant will have the
13 right, subject to paying just com-
14 pensation, to take your property for
15 its project.’.

16 “(II) Complete instructions on
17 how the interested party can move to
18 intervene in the proceeding described
19 in the notice, including instructions on
20 how to intervene—

21 “(aa) electronically; and

22 “(bb) through a paper filing.

23 “(III) A clear statement of the
24 contents required to be included in a

1 motion to intervene in the proceeding
2 described in the notice.

3 “(IV) The deadline for the inter-
4 ested party to move to intervene in
5 the proceeding described in the notice.

6 “(V) A section, separated from
7 the remaining text of the notice and
8 clearly displayed in bold print, inform-
9 ing the interested party that—

10 “(aa) in order to preserve
11 the right to seek judicial review
12 of a decision by the Commission
13 relating to the certificate of pub-
14 lic convenience and necessity, the
15 interested party must intervene
16 in the proceeding described in the
17 notice; and

18 “(bb) intervention in the
19 proceeding described in the notice
20 is the only way to preserve the
21 right to judicial review described
22 in item (aa).

23 “(ii) REVIEW.—The Commission
24 shall—

1 “(I) review each notice submitted
2 to the Commission under subpara-
3 graph (A)(ii) to determine whether
4 the notice meets the requirements de-
5 scribed in clause (i); and

6 “(II) approve the notice only if
7 the notice meets—

8 “(aa) those requirements;
9 and

10 “(bb) any other require-
11 ments that the Commission de-
12 termines to be necessary to pro-
13 vide adequate notice.

14 “(iii) SERVICE.—

15 “(I) IN GENERAL.—An applicant
16 may not serve notice on an interested
17 party under paragraph (1) unless the
18 notice has been approved by the Com-
19 mission under clause (ii).

20 “(II) DEADLINE.—A notice
21 under paragraph (1) shall be served
22 on an interested party not later than
23 90 days before the last day on which
24 the interested party may intervene in
25 the proceeding described in the notice.

1 “(C) PUBLIC AVAILABILITY OF INFORMA-
 2 TION RELATING TO INTERESTED PARTIES.—On
 3 request of any person, the Commission shall
 4 disclose the names and addresses submitted to
 5 the Commission under subparagraph (A)(i),
 6 subject to such reasonable terms and conditions
 7 as the Commission determines to be appro-
 8 priate.”.

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

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

14 “(e) ISSUANCE OF CERTIFICATE.—

15 “(1) IN GENERAL.—Except in the cases gov-
 16 erned by the provisos in subparagraphs (A) and (B)
 17 of subsection (c)(1), and subject to paragraphs (2)
 18 through (4),”;

19 (2) in paragraph (1) (as so designated), by
 20 striking “necessity; otherwise” in the first sentence
 21 and all that follows through “The Commission” in
 22 the second sentence and inserting the following: “ne-
 23 cessity.”

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

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

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

7 “(4) NOTICE OF ISSUANCE.—

8 “(A) IN GENERAL.—On issuance of a cer-
 9 tificate of public convenience and necessity by
 10 the Commission, the applicant requesting the
 11 certificate shall provide to each interested party
 12 on whom the applicant served notice of the ap-
 13 plication under subsection (d) a notice of the
 14 issuance of the certificate.

15 “(B) REQUIREMENTS.—Each notice under
 16 subparagraph (A) shall include—

17 “(i) complete instructions on how the
 18 recipient of the notice may apply for a re-
 19 hearing before the Commission;

20 “(ii) a clear statement of the contents
 21 required to be included in an application
 22 for a rehearing before the Commission;

23 “(iii) the deadline for the recipient to
 24 file that application;

1 “(iv) the time period for seeking judi-
 2 cial review of a decision of the Commission
 3 on an application for rehearing;

4 “(v) a statement in bold print inform-
 5 ing the recipient that judicial review will
 6 not be available with respect to a decision
 7 of the Commission on any issue for which
 8 the recipient has not sought rehearing be-
 9 fore the Commission; and

10 “(vi) a clear reference to—

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

13 “(II) any rules issued under
 14 those subsections relating to the time
 15 or manner of seeking—

16 “(aa) a rehearing before the
 17 Commission; or

18 “(bb) judicial review of a de-
 19 cision of the Commission under
 20 this section, including any deci-
 21 sion on a rehearing.

22 “(C) EFFECT OF NOTICE.—No court shall
 23 have jurisdiction over any action to exercise the
 24 right of eminent domain under subsection (h)
 25 with respect to any property covered by the ap-

1 plicable certificate of public convenience and ne-
 2 cessity issued under this subsection unless the
 3 holder of the certificate has provided notice
 4 under this paragraph to each interested party
 5 described in subparagraph (A).”.

6 **SEC. 3. CONDITIONED CERTIFICATES.**

7 Section 7(e) of the Natural Gas Act (15 U.S.C.
 8 717f(e)) (as amended by section 2(b)) is amended by add-
 9 ing at the end the following:

10 “(5) RESTRICTIONS.—

11 “(A) EMINENT DOMAIN.—

12 “(i) COMMENCEMENT OF ACTION.—A
 13 holder of a certificate of public convenience
 14 and necessity may not commence an action
 15 under subsection (h) until the earlier of—

16 “(I) the earliest date on which all
 17 timely applications for rehearing
 18 under section 19(a) have received a
 19 ruling on the merits by the Commis-
 20 sion under that section; and

21 “(II) the date that is 90 days
 22 after the latest date on which a timely
 23 application for rehearing under sec-
 24 tion 19(a) has been deemed denied

1 under paragraph (3)(B)(i) of that sec-
 2 tion.

3 “(ii) JURISDICTION OVER EMINENT
 4 DOMAIN ACTIONS.—No court shall have ju-
 5 risdiction over any action to exercise the
 6 right of eminent domain under subsection
 7 (h) with respect to any property covered by
 8 the applicable certificate of public conven-
 9 ience and necessity if the holder of that
 10 certificate has not received all certifi-
 11 cations, authorizations, approvals, permits,
 12 or other permissions required under Fed-
 13 eral law—

14 “(I) to begin construction; and

15 “(II) to complete the entire
 16 project for which the certificate was
 17 issued.

18 “(B) CONSTRUCTION.—

19 “(i) IN GENERAL.—Except as pro-
 20 vided in clause (ii), the holder of a certifi-
 21 cate of public convenience and necessity
 22 may not begin construction,
 23 preconstruction, or land-disturbing activi-
 24 ties under that certificate until the later
 25 of—

1 “(I) the earliest date on which
 2 the holder has received all required
 3 certifications, authorizations, approv-
 4 als, permits, or other permissions de-
 5 scribed in subparagraph (A)(ii); and

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

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

12 “(bb) been deemed denied
 13 under paragraph (3)(B)(i) of
 14 that section.

15 “(ii) EXCEPTION.—Clause (i) shall
 16 not apply to activities described in that
 17 clause that are carried out—

18 “(I) on land that is owned by the
 19 holder of the certificate of public con-
 20 venience and necessity; or

21 “(II) in an existing utility right-
 22 of-way.”.

23 **SEC. 4. EMINENT DOMAIN.**

24 (a) STATEMENT OF POLICY.—With respect to the
 25 construction and operation of natural gas pipelines, it is

1 the policy of the United States to protect the rights of
 2 citizens of the United States to their private property, in-
 3 cluding by limiting the taking of private property by the
 4 Federal Government and the use of eminent domain au-
 5 thority granted under any Federal statute to situations
 6 in which the taking is for public use, with just compensa-
 7 tion, and required by the public convenience and necessity,
 8 and not merely to advance the economic interests of pri-
 9 vate parties that would be given ownership or use of the
 10 property taken.

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

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

16 “(h) EMINENT DOMAIN.—

17 “(1) IN GENERAL.—When any holder”;

18 (2) in paragraph (1) (as so designated), in the
 19 second sentence—

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

22 “(2) PRACTICE AND PROCEDURE.—

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

(3) in paragraph (2)(A) (as so designated), by striking “situated: Provided, That the” and inserting the following “situated.

“(B) LIMITATION.—The”; and

(4) by adding at the end the following:

“(3) JUST COMPENSATION.—

“(A) DEFINITION OF LOST CONSERVATION VALUE.—In this paragraph, the term ‘lost conservation value’ means—

“(i) the value of any use of land for conservation purposes (as defined in section 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 compensa-

tion 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:

“(4) APPRAISALS AND OFFERS OF COMPENSATION.—

“(A) APPRAISALS.—

“(i) IN GENERAL.—The holder of a certificate of public convenience and necessity shall have the property covered by the certificate independently appraised in accordance with generally accepted appraisal standards.

“(ii) REQUIREMENT.—The owner of the applicable property (or a designated representative of the owner) shall be given the opportunity to accompany the appraiser during any inspection of the prop-

1 erty that is part of an appraisal under
2 clause (i).

3 “(iii) TIMING.—An appraisal under
4 clause (i) shall be carried out before the
5 holder of the certificate of public conven-
6 ience and necessity makes an offer of com-
7 pensation to the owner of the applicable
8 property.

9 “(B) OFFERS OF COMPENSATION.—Any
10 offer of compensation made to an owner of
11 property that is covered by a certificate of pub-
12 lic convenience and necessity—

13 “(i) shall be made in writing;

14 “(ii) may not be for an amount less
15 than the fair market value of the property,
16 as determined by an appraisal carried out
17 under subparagraph (A); and

18 “(iii) shall include damages to any
19 property of the owner that is adjacent to
20 the property covered by the certificate.

21 “(5) JURISDICTION OVER EMINENT DOMAIN AC-
22 TIONS.—No court shall have jurisdiction over any
23 action to exercise the right of eminent domain under
24 this subsection unless—

1 “(A) an appraisal has been carried out in
2 accordance with subparagraph (A) of paragraph
3 (4); and

4 “(B) the holder of the certificate of public
5 convenience and necessity has made an offer of
6 compensation to the owner of the applicable
7 property in accordance with subparagraph (B)
8 of that paragraph.

9 “(6) RIGHT OF POSSESSION.—An owner of
10 property covered by a certificate of public conven-
11 ience and necessity shall not be required to sur-
12 render possession of the property unless the holder
13 of the certificate—

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

16 “(B) has deposited with the applicable
17 court the amount of the award of compensation
18 in the condemnation proceeding for the prop-
19 erty.”.

20 **SEC. 6. PROCESS COORDINATION FOR ENVIRONMENTAL**
21 **REVIEW.**

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

24 “(g) ENVIRONMENTAL REVIEW FOR INTERSTATE
25 NATURAL GAS PIPELINES.—

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

2 “(A) FEDERAL AUTHORIZATION.—

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

8 “(ii) INCLUSIONS.—The term ‘Federal
9 authorization’ includes any permits, special
10 use authorizations, certifications, opinions,
11 or other approvals as may be required
12 under Federal law with respect to an appli-
13 cation for a certificate of public conven-
14 ience and necessity under section 7.

15 “(B) PROJECT.—The term ‘project’ means
16 a project for the construction or extension of fa-
17 cilities for the transportation in interstate com-
18 merce of natural gas that requires Federal au-
19 thorization.

20 “(2) CUMULATIVE IMPACTS ANALYSIS.—In con-
21 sidering an application for Federal authorization for
22 a project in a State, if, during the 1-year period be-
23 ginning on the date on which the application is filed,
24 an application for Federal authorization for a sepa-
25 rate project is filed, and that project is located in

1 the same State and within 100 miles of the first
2 project, the Commission shall consider both projects
3 to be 1 project for purposes of complying with the
4 National Environmental Policy Act of 1969 (42
5 U.S.C. 4321 et seq.).

6 “(3) SUPPLEMENTAL ENVIRONMENTAL IMPACT
7 STATEMENTS.—

8 “(A) IN GENERAL.—If the Commission de-
9 termines that comments submitted in response
10 to a draft environmental impact statement pre-
11 pared with respect to an application for Federal
12 authorization raise issues that exceed the initial
13 scope of the draft environmental impact state-
14 ment, a supplemental environmental impact
15 statement shall be prepared for the project.

16 “(B) MITIGATION PLANS.—If a draft envi-
17 ronmental impact statement prepared with re-
18 spect to an application for Federal authoriza-
19 tion does not include information about mitiga-
20 tion plans for adverse impacts that cannot rea-
21 sonably be avoided, a supplemental environ-
22 mental impact statement shall be prepared that
23 includes that information.

24 “(4) PUBLIC MEETING REQUIREMENTS.—

1 “(A) IN GENERAL.—In complying with the
2 National Environmental Policy Act of 1969 (42
3 U.S.C. 4321 et seq.) with respect to an applica-
4 tion for Federal authorization, the Commission
5 shall ensure that public meetings shall be
6 held—

7 “(i) in each county or equivalent sub-
8 division in which the project will be lo-
9 cated; and

10 “(ii) during each period of public com-
11 ment preceding, if applicable, publication
12 of—

13 “(I) a draft environmental im-
14 pact statement;

15 “(II) a final environmental im-
16 pact statement; and

17 “(III) any supplemental environ-
18 mental impact statement.

19 “(B) NOTICE.—The Commission shall en-
20 sure that notice of each meeting held under
21 subparagraph (A)—

22 “(i) is provided to the public and each
23 interested party not later than 30 days be-
24 fore the date of the meeting; and

1 “(ii) includes the information de-
 2 scribed in section 7(d)(2)(B)(i).”.

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 30 days after the date on which the application for rehearing is filed with the Commission, the application for rehearing 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 for rehearing shall not be considered to be a ruling on the merits of the application for rehearing.

1 “(iii) JUDICIAL REVIEW.—An applica-
 2 tion for rehearing that is deemed denied
 3 under clause (i) may be reviewed by a
 4 court of appeals of the United States in
 5 accordance with subsection (b).”;

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

8 “(3) DECISION ON APPLICATION.—

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

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

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

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

17 “(a) APPLICATION FOR REHEARING.—

18 “(1) IN GENERAL.—Any person”.

○