S. 5653, Bipartisan American Affordability and Jobs Act

Overview

Maintaining and expanding America's natural gas pipeline and storage infrastructure is essential to delivering affordable, reliable energy to homes, businesses, and manufacturers as energy demand grows, driven by domestic manufacturing, artificial intelligence, data center development, and LNG exports. Yet cumbersome federal permitting processes, duplicative environmental reviews, uncertain timelines, and prolonged litigation continue to delay critical infrastructure projects and increase costs.

The Interstate Natural Gas Association of America (INGAA) strongly supports the *Bipartisan American Affordability and Jobs Act of 2026 (S. 5653*) and the accompanying Manager's Amendment. The legislation includes significant reforms to improve the timeliness, coordination, predictability, and durability of federal infrastructure permitting while maintaining appropriate environmental safeguards and regulatory oversight. INGAA urges Congress to pass S. 5653 and preserve its core permitting reforms, particularly those addressing CWA Sections 401 and 404, NEPA, pipeline modernization, permitting certainty, and judicial review.

Key Provisions Benefiting Interstate Natural Gas Pipelines

Clean Water Act (CWA) Section 401 Certification

- **Pipeline-specific applicability:** For Natural Gas Act (NGA) Section 7 projects, focuses certification requirements on federal authorizations for activities that may result in direct point-source discharges into waters of the United States.
- **Preservation of waiver authority:** Expressly recognizes that certification requirements may be satisfied through a Section 401 waiver, preserving this important protection against permitting delays.
- **Focused state authority:** Limits certification review to applicable water-quality requirements and establishes heightened evidentiary standards for denying certification.
- **Limits on conditions:** Requires certification conditions to be necessary and the least burdensome means of achieving compliance with applicable water-quality requirements.
- **Enforceable deadlines:** Establishes a maximum nine-month certification review period for covered interstate pipeline projects and provides additional judicial oversight of certification decisions.

Clean Water Act Section (CWA) 404/Nationwide Permit 12

- **Permit availability:** Preserves Nationwide Permit 12 (NWP 12) for qualifying utility-line activities, including single and complete linear projects meeting the legislation's two-acre threshold.
- **Longer permit duration:** Extends general permit terms from five to ten years, improving predictability for pipeline construction and maintenance.
- **Litigation certainty:** Establishes a 150-day deadline for qualifying judicial challenges and limits the circumstances under which courts may vacate permits or halt authorized activities because of procedural deficiencies.

National Environmental Policy Act

- **Predictable timelines:** Generally establishes one-year deadlines for environmental assessments and two-year deadlines for environmental impact statements.
- **Coordinated reviews:** Promotes concurrent federal agency reviews and improved coordination to reduce delays in obtaining authorizations following FERC's environmental review.
- **Clearer scope:** Reinforces NEPA's procedural nature and clarifies the scope of environmental analysis, including consideration of reasonably foreseeable effects, alternatives, and project sponsors' objectives.
- **Reduced litigation uncertainty:** Establishes a general 150-day deadline for qualifying NEPA challenges and limits remedies for procedural deficiencies while preserving applicable NGA judicial review procedures.

Pipeline Modernization Within Existing Corridors

- **Streamlined improvements:** Facilitates qualifying pipeline repair, replacement, upgrades, looping, compression, optimization, and capacity enhancements within existing rights-of-way, previously authorized construction footprints, and necessary adjacent areas extending up to one-quarter mile beyond existing rights-of-way.
- **Reduced duplication:** Exempts qualifying activities from NEPA review and National Historic Preservation Act (NHPA) Section 106 consultation while preserving other applicable federal permitting requirements.

Permitting Certainty and Protection Against Discriminatory Treatment

- **Protection of existing approvals:** Establishes protections against unwarranted revocation, suspension, withdrawal, or modification of covered federal authorizations in effect on or after November 6, 2026.
- **Construction and operational certainty:** Protects authorized project construction and normal-capacity operations against improper federal interference, while preserving appropriate regulatory oversight.
- **Protection against discriminatory treatment:** Establishes a judicial mechanism to address statistically supported patterns of intentional discriminatory permitting treatment, including improper denials or unreasonable delays affecting natural gas pipelines, LNG facilities, and natural gas processing facilities.

Judicial Review and Legal Remedies

- **Defined litigation windows:** Establishes 150-day filing deadlines for qualifying NEPA, CWA Section 404, FAST-41, and energy infrastructure authorization challenges.
- **Expedited review:** Provides procedures intended to accelerate judicial consideration of qualifying permitting disputes.
- **Remand without vacatur:** Limits the circumstances in which procedural deficiencies can invalidate project authorizations, allowing agencies to correct identified deficiencies while approved projects continue, subject to applicable exceptions.
- **Independent review of FERC penalties:** Extends de novo judicial review of contested civil penalties under the NGA, providing natural gas companies procedural protections comparable to those available to electric utilities under the Federal Power Act.