

# SENATE BILL 387

M3, M5, C5

EMERGENCY BILL

9lr1968  
CF 9lr1720

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By: **Senator Zirkin**

Introduced and read first time: January 31, 2019

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

AN ACT concerning

### **Environment – Water Quality Certifications (Pipeline and Water Protection Act of 2019)**

FOR the purpose of requiring a person seeking to construct a natural gas pipeline to apply for a certain water quality certification and pay a certain fee; requiring the Department of the Environment to establish a certain fee for the submission and review of a water quality certification application; specifying how the Department will determine the amount of the fee; requiring that the fee be deposited, credited, and appropriated in a certain manner; requiring the Department to review a water quality certification application in accordance with certain provisions of law; prohibiting the Department from waiving certain authority to review a water quality certification application; requiring the Department to review a water quality certification application for completeness within a certain number of days; requiring the Department to provide a certain notice under certain circumstances; specifying the criteria that must be included in the Department's review of a water quality certification application; authorizing the Department to request certain information in a certain manner during its review of a water quality certification application; authorizing the Department to deny a water quality certification application under certain circumstances; requiring the Department to take certain actions if the Department determines that a water quality certification application should be approved; requiring the Department to take a certain action on a water quality certification application within a certain period of time; requiring a person seeking to construct a natural gas pipeline to submit certain plans to the Department; prohibiting a person from beginning to construct a certain natural gas pipeline until a certain approval authority approves certain plans; requiring the approval authority to review and make a certain decision on certain plans and revisions of certain plans within a certain number of days; requiring the approval authority to provide a certain rationale to a certain person in a certain manner; defining certain terms; making this Act an emergency measure; and generally relating to water quality certifications.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY adding to

Article – Environment

Section 14–601 through 14–615 to be under the new subtitle “Subtitle 6. Natural Gas Pipeline Review”

Annotated Code of Maryland

(2014 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Environment**

**SUBTITLE 6. NATURAL GAS PIPELINE REVIEW.**

**PART I. GENERAL PROVISIONS.**

**14–601.**

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “APPLICATION” MEANS AN APPLICATION FOR A WATER QUALITY CERTIFICATION FOR THE CONSTRUCTION OF AN INTERSTATE NATURAL GAS PIPELINE.

(C) “GRADING AND SEDIMENT CONTROL PLAN” MEANS A GRADING AND SEDIMENT CONTROL PLAN SUBMITTED UNDER TITLE 4, SUBTITLE 1 OF THIS ARTICLE.

(D) “KARST TERRAIN” MEANS A TOPOGRAPHY FORMED FROM THE DISSOLUTION OF SOLUBLE ROCKS SUCH AS LIMESTONE, DOLOMITE, AND GYPSUM.

(E) “NATURAL GAS PIPELINE” OR “PIPELINE” MEANS A PIPELINE:

(1) THAT IS OR WILL BE CONSTRUCTED TO TRANSPORT NATURAL GAS ACROSS MORE THAN ONE STATE; AND

(2) FOR WHICH AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS REQUIRED UNDER SECTION 7(C) OF THE FEDERAL NATURAL GAS ACT.

(F) “STORMWATER MANAGEMENT PLAN” MEANS A STORMWATER MANAGEMENT PLAN SUBMITTED UNDER TITLE 4, SUBTITLE 2 OF THIS ARTICLE.

(G) "WATER QUALITY CERTIFICATION" MEANS A WATER QUALITY CERTIFICATION REQUESTED IN ACCORDANCE WITH SECTION 401 OF THE FEDERAL CLEAN WATER ACT.

14-602. RESERVED.

14-603. RESERVED.

**PART II. WATER QUALITY CERTIFICATION.**

14-604.

A PERSON SEEKING TO CONSTRUCT AN INTERSTATE NATURAL GAS PIPELINE SHALL:

(1) APPLY TO THE DEPARTMENT FOR A WATER QUALITY CERTIFICATION IN ACCORDANCE WITH COMAR 28.08.02.10; AND

(2) PAY A NONREFUNDABLE FEE UNDER § 14-605 OF THIS SUBTITLE.

14-605.

(A) THE DEPARTMENT SHALL ESTABLISH A NONREFUNDABLE FEE FOR THE SUBMISSION AND REVIEW OF AN APPLICATION.

(B) THE AMOUNT OF THE FEE SHALL BE:

(1) BASED ON:

(I) THE SIZE OF THE PROPOSED PROJECT;

(II) THE ESTIMATED OR ACTUAL COSTS INCURRED BY THE DEPARTMENT FOR IMPLEMENTATION OF THIS SUBTITLE; AND

(III) ANY OTHER FACTORS THE DEPARTMENT CONSIDERS NECESSARY; AND

(2) THE GREATER OF:

(I) \$400; OR

(II) 1% OF THE GROSS VALUE OF THE PROPOSED PROJECT, NOT TO EXCEED \$20,000.

**(C) THE FEE SHALL BE:**

- (1) DEPOSITED IN THE STATE TREASURY; AND**
- (2) CREDITED TO AN ACCOUNT OF THE DEPARTMENT.**

**(D) FEES DEPOSITED IN THE STATE TREASURY SHALL BE CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT TO MEET THE ADMINISTRATIVE EXPENSES OF THIS SUBTITLE.**

**14-606.**

**(A) THE DEPARTMENT SHALL CONDUCT A REVIEW OF AN APPLICATION IN ACCORDANCE WITH THIS SUBTITLE AND COMAR 28.08.02.10.**

**(B) THE DEPARTMENT MAY NOT WAIVE ITS AUTHORITY UNDER SECTION 401 OF THE FEDERAL CLEAN WATER ACT TO REVIEW AN APPLICATION.**

**14-607.**

**(A) WITHIN 60 DAYS OF RECEIPT OF AN APPLICATION, THE DEPARTMENT SHALL REVIEW THE APPLICATION FOR COMPLETENESS.**

**(B) IF THE DEPARTMENT DETERMINES THAT AN APPLICATION IS INCOMPLETE, THE DEPARTMENT SHALL PROVIDE NOTICE TO THE APPLICANT THAT INCLUDES:**

- (1) A LIST OF THE INCOMPLETE PORTIONS OF THE APPLICATION; AND**
- (2) A DESCRIPTION OF ANY DEFICIENCIES.**

**(C) WHEN THE DEPARTMENT DETERMINES THAT AN APPLICATION IS COMPLETE, THE DEPARTMENT SHALL PROVIDE NOTICE TO:**

- (1) THE PUBLIC ON THE DEPARTMENT'S WEBSITE;**
- (2) THE CHIEF EXECUTIVE OFFICER FOR THE MUNICIPALITY IN WHICH THE CONSTRUCTION WILL OCCUR;**
- (3) THE CHIEF EXECUTIVE OFFICER FOR THE COUNTY IN WHICH THE CONSTRUCTION WILL OCCUR; AND**

(4) A PERSON WHO MADE A REQUEST IN WRITING TO RECEIVE NOTICE.

14-608.

THE DEPARTMENT'S REVIEW OF AN APPLICATION SHALL INCLUDE A REVIEW OF:

(1) A PROPOSED PROJECT'S POTENTIAL IMPACTS ON THE STATE'S WATER QUALITY STANDARDS;

(2) ANY CONSTRUCTION THROUGH KARST TERRAIN AND ASSOCIATED GROUNDWATER MAPPING;

(3) POTENTIAL IMPACTS ON:

(I) PRIVATE DRINKING WATER WELLS LOCATED WITHIN 500 FEET OF THE CONSTRUCTION SITE;

(II) DOWNSTREAM WATER SUPPLIES; AND

(III) DRINKING WATER AQUIFERS LOCATED WITHIN 500 FEET OF THE CONSTRUCTION SITE;

(4) CUMULATIVE IMPACTS ON THE WATERSHED WITHIN WHICH CONSTRUCTION MAY OCCUR, INCLUDING IMPACTS ON WATERWAYS FROM INFRASTRUCTURE ASSOCIATED WITH THE CONSTRUCTION OR CONNECTION OF A PIPELINE;

(5) ALL ACTIVITIES THAT WILL OCCUR IN UPLAND AREAS WITHIN THE WATERSHED WITHIN WHICH CONSTRUCTION MAY OCCUR, INCLUDING ACTIVITIES:

(I) ON SLOPES WITH A GRADE GREATER THAN 15%;

(II) IN KARST TERRAIN, INCLUDING SINKHOLES AND UNDERGROUND SPRINGS;

(III) THAT ARE DETERMINED BY THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF NATURAL RESOURCES, TO BE CLOSE TO SENSITIVE STREAMS AND WETLANDS;

(IV) ON LAND WITH SEASONALLY HIGH WATER TABLES;

(V) WITHIN 500 FEET OF A WATER IMPOUNDMENT STRUCTURE OR RESERVOIR; AND

(VI) IN AREAS THAT HAVE:

1. HIGHLY ERODIBLE SOILS;
2. ACID SULFATE SOILS; OR
3. SOILS WITH A LOW PH;

(6) HOW THE GREENHOUSE GAS EMISSIONS ASSOCIATED WITH A PROPOSED PROJECT WILL IMPACT WATER QUALITY; AND

(7) HOW A PROPOSED PROJECT MAY NEED TO BE MODIFIED TO ACCOUNT FOR CLIMATE CHANGE, INCLUDING MODIFICATIONS TO THE:

- (I) ASSOCIATED GRADING AND SEDIMENT CONTROL PLAN;
- (II) ASSOCIATED STORMWATER MANAGEMENT PLAN; AND
- (III) DEPTH OF THE PIPELINE.

14-609.

(A) (1) AT ANY TIME DURING THE REVIEW OF AN APPLICATION, THE DEPARTMENT MAY MAKE A WRITTEN REQUEST TO THE APPLICANT FOR ADDITIONAL INFORMATION THE DEPARTMENT CONSIDERS NECESSARY TO CONDUCT ITS REVIEW.

(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE DEPARTMENT SHALL SPECIFY IN THE REQUEST FOR INFORMATION THE DATE BY WHICH THE INFORMATION MUST BE SUBMITTED TO THE DEPARTMENT.

(II) THE DEPARTMENT SHALL GIVE AN APPLICANT A REASONABLE AMOUNT OF TIME TO RESPOND TO A REQUEST FOR INFORMATION MADE UNDER THIS SECTION.

(B) THE DEPARTMENT MAY DENY AN APPLICATION IF AN APPLICANT FAILS TO PROVIDE THE INFORMATION REQUESTED BY THE DATE SPECIFIED IN THE INFORMATION REQUEST.

14-610.

(A) IF, ON COMPLETION OF THE REVIEW REQUIRED UNDER THIS PART, THE DEPARTMENT DETERMINES THAT AN APPLICATION SHOULD BE APPROVED, THE DEPARTMENT SHALL:

(1) SUBJECT TO SUBSECTION (B) OF THIS SECTION, DEVELOP A DRAFT WATER QUALITY CERTIFICATION;

(2) MAKE THE DRAFT WATER QUALITY CERTIFICATION AVAILABLE FOR PUBLIC COMMENT;

(3) MAKE THE INFORMATION CONTAINED IN THE APPLICATION AND ANY ADDITIONAL INFORMATION OBTAINED THROUGH AN INFORMATION REQUEST UNDER § 14-609 OF THIS SUBTITLE AVAILABLE TO THE PUBLIC; AND

(4) HOLD A PUBLIC HEARING IN EACH COUNTY IN WHICH CONSTRUCTION MAY OCCUR.

(B) THE DRAFT WATER QUALITY CERTIFICATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE ANY ADDITIONAL CONDITIONS THAT THE DEPARTMENT DETERMINES ARE NECESSARY TO PROTECT WATER QUALITY.

14-611.

(A) (1) AFTER THE PUBLIC COMMENT PERIOD, THE DEPARTMENT SHALL, WITHIN 1 YEAR OF SUBMISSION OF A COMPLETE APPLICATION, ISSUE A DECISION IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION TO APPROVE, APPROVE WITH CONDITIONS, OR DENY AN APPLICATION.

(2) A DECISION ISSUED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL:

(i) BE IN WRITING;

(ii) BE MADE AVAILABLE TO THE PUBLIC; AND

(iii) INCLUDE THE RATIONALE FOR THE DEPARTMENT'S DECISION.

(B) THE DEPARTMENT MAY DENY AN APPLICATION THAT FAILS TO MEET THE REQUIREMENTS OF THIS PART OR ANY OTHER LAW OR REGULATION UNDER WHICH A WATER QUALITY CERTIFICATION IS SOUGHT.

**14-612. RESERVED.**

**14-613. RESERVED.**

**PART III. GRADING AND SEDIMENT CONTROL PLANS AND STORMWATER  
MANAGEMENT PLANS.**

**14-614.**

**(A) A PERSON SEEKING TO CONSTRUCT A NATURAL GAS PIPELINE SHALL  
SUBMIT TO THE DEPARTMENT:**

**(1) A GRADING AND SEDIMENT CONTROL PLAN FOR THE  
CONSTRUCTION OF THE PIPELINE TO THE APPROPRIATE APPROVAL AUTHORITY IN  
ACCORDANCE WITH TITLE 4, SUBTITLE 1 OF THIS ARTICLE; AND**

**(2) A STORMWATER MANAGEMENT PLAN FOR THE CONSTRUCTION OF  
THE PIPELINE TO THE APPROPRIATE APPROVAL AUTHORITY IN ACCORDANCE WITH  
TITLE 4, SUBTITLE 2 OF THIS ARTICLE.**

**(B) A PERSON SEEKING TO CONSTRUCT A NATURAL GAS PIPELINE MAY NOT  
BEGIN CONSTRUCTION, INCLUDING LAND-DISTURBING ACTIVITIES, UNTIL THE  
APPROPRIATE APPROVAL AUTHORITY APPROVES A GRADING AND SEDIMENT  
CONTROL PLAN AND A STORMWATER MANAGEMENT PLAN FOR THE CONSTRUCTION  
OF THE PIPELINE.**

**14-615.**

**(A) (1) AN APPROVAL AUTHORITY SHALL REVIEW AND MAKE A DECISION  
WHETHER TO APPROVE, APPROVE WITH CONDITIONS, OR DENY A GRADING AND  
SEDIMENT CONTROL PLAN OR A STORMWATER MANAGEMENT PLAN WITHIN 60 DAYS  
OF SUBMISSION OF THE PLAN.**

**(2) THE APPROVAL AUTHORITY SHALL PROVIDE, IN WRITING, THE  
RATIONALE FOR DENYING A GRADING AND SEDIMENT CONTROL PLAN OR A  
STORMWATER MANAGEMENT PLAN TO THE PERSON THAT SUBMITTED THE PLAN.**

**(B) IF A PERSON RESUBMITS A REVISED GRADING AND SEDIMENT CONTROL  
PLAN OR A REVISED STORMWATER MANAGEMENT PLAN THAT WAS PREVIOUSLY  
DENIED, THE APPROVAL AUTHORITY SHALL REVIEW AND MAKE A DECISION  
WHETHER TO APPROVE THE PLAN WITHIN 30 DAYS OF RESUBMISSION.**



SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.