



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5202

Introduced 1/31/2022, by Rep. Sonya M. Harper

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-406.2

Amends the Public Utilities Act. Provides that no land or personal property of any landowner shall be taken or infringed upon by eminent domain, easement, or other mechanism for the installation of any infrastructure for the distribution of natural gas that was approved without the express and written consent of the landowner or property owner. Provides that the Illinois Commerce Commission shall cancel any agreement or contract entered into in furtherance of any project if it determines that corrupt or fraudulent practices were engaged in by any individual in creation of the agreement, and the Commission has the authority to inspect and audit accounts and records of any entity relating to the execution and performance of any agreement entered into in furtherance of any project. Provides that to protect the unique natural ecosystem of Pembroke Township, the Commission shall provide public notice in an easily accessible manner of past or pending complaints concerning public safety, health, or the environment involving any individual that is agreeing to contracting to perform work related to construction of any natural gas pipeline. Provides that the natural gas utility prior to construction of natural gas utilities shall submit a compliance filing to the Commission demonstrating that specified preconstruction requirements are satisfied.

LRB102 24418 AMQ 33652 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Section 8-406.2 as follows:

6 (220 ILCS 5/8-406.2)

7 Sec. 8-406.2. Certificate of public convenience and
8 necessity; extension of utility service area and facilities to
9 serve designated hardship areas.

10 (a) Where a public utility has met the requirements of
11 Section 8-406, this ~~This~~ Section is intended to provide a
12 mechanism by which a gas public utility may extend its service
13 territory and gas distribution system to provide service to
14 designated low-income areas whose residents ~~do not have access~~
15 ~~to natural gas service~~ and must purchase more costly
16 alternatives to satisfy their energy needs.

17 (b) In this Section:

18 "Designated hardship area" is limited to Pembroke
19 Township, if the Township meets certain requirements. Any
20 "designated hardship area" only applies to the specific
21 community of Pembroke within the scope of the Project.
22 Pembroke Township will only be categorized as a "designated
23 hardship area" if it meets the following requirements:

1 (1) the area is designated as a qualified census tract
2 by the U.S. Department of Housing and Urban Development as
3 published in the most current Federal Register; if the
4 U.S. Department of Housing and Urban Development ceases to
5 make this designation, then at least 25% of the households
6 in the area are at or below the poverty level; and

7 (2) the area is not currently served by a gas utility.

8 "Hardship area facilities" means all gas distribution
9 system facilities that are proposed to be constructed or
10 extended and used to serve the designated hardship area,
11 through and including retail gas meters. "Hardship area
12 facilities" includes the capacity to address reasonably
13 foreseeable growth in areas adjacent to or in the vicinity of
14 the designated hardship area.

15 (c) A gas public utility may apply for a certificate of
16 public convenience and necessity pursuant to this Section to
17 increase its gas service territory and extend its gas
18 distribution system to serve a designated hardship area. An
19 application under this Section shall include all of the
20 following:

21 (1) a description of the designated hardship area and
22 its relationship to the existing gas distribution system
23 of the applicant;

24 (2) a showing that the designated hardship area meets
25 the criteria for being a designated hardship area under
26 subsection (b) of this Section;

1 (3) a description of the hardship area facilities
2 proposed to serve the designated hardship area;

3 (4) a projection of the costs to construct and deploy
4 the hardship area facilities;

5 (5) a showing that the estimated cost to construct and
6 deploy the hardship area facilities is equal to or less
7 than 250% of the amount allowed under the gas utilities'
8 then current tariffs to provide standard service to extend
9 main and services; and

10 (6) a statement to confirm that the public utility has
11 held at least 2 pre-filing public meetings in the
12 community and considered public input from those meetings
13 when developing and implementing its plans.

14 (d) The Commission shall, after notice and hearing, grant
15 a certificate of public convenience and necessity under this
16 Section if, based upon the application filed with the
17 Commission and the evidentiary record, the Commission finds
18 that all of the following criteria are satisfied:

19 (1) the area to be served is a designated hardship
20 area;

21 (2) the proposed hardship area facilities will provide
22 adequate, reliable, and efficient gas delivery service to
23 the customers within the designated hardship area and are
24 the least-cost means of providing such gas delivery
25 service to these customers;

26 (3) the public utility is capable of efficiently

1 managing and supervising the construction of the hardship
2 area facilities and has taken sufficient action to ensure
3 adequate and efficient construction and supervision of the
4 construction;

5 (4) the public utility is capable of financing the
6 construction of the hardship area facilities without
7 significant adverse financial consequences for the utility
8 or its customers;

9 (5) the estimated cost to construct and deploy the
10 hardship area facilities is equal to or less than 250% of
11 the amount allowed under the gas utilities then current
12 tariffs to provide standard service to extend main and
13 services;

14 (6) the public utility can guarantee that residents of
15 Hopkins Park who choose to opt out of converting to a
16 natural gas delivery service will not be assessed any
17 charges relating to the pipeline construction or any other
18 fees relating to the designated hardship area facilities;

19 (7) the public utility disclosed to the Commission the
20 mapping of the proposed pipeline and infrastructure
21 management requirements within the designated hardship
22 area; and

23 (8) the public utility has guaranteed that, before
24 implementation, it will disclose to the Commission the
25 cost to the utility for customers of Hopkins Park to
26 utilize gas services.

1 (e) The Commission shall issue its decision with findings
2 of fact and conclusions of law granting or denying the
3 application no later than 120 days after the application is
4 filed.

5 (f) No land or personal property of any landowner shall be
6 taken or otherwise infringed upon or jeopardized, by eminent
7 domain, easement, or other mechanism for the purpose of the
8 design, construction, and installation of any pipeline, mains,
9 services, facilities, or other infrastructure for the
10 distribution of natural gas that is or has been approved
11 wholly or in part pursuant to this Section without the express
12 and written consent of the landowner or property owner. Where
13 any personal property is used in any way for installation of
14 any pipeline, mains, services, facilities, or other
15 infrastructure for distribution of natural gas, with written
16 consent of the landowner or property owner, the natural gas
17 utility that owns the infrastructure shall not disturb,
18 temporarily or permanently, any cropland, farmland,
19 pastureland, forest, or other property inhabited by plants or
20 wildlife. The use of personal property, including for storing,
21 moving, or using construction equipment, shall be strictly
22 limited to roadways.

23 (g) In furtherance of public accountability and to guard
24 against misuse of public and ratepayer funds, the Commission
25 shall:

26 (1) where it has the authority, cancel any agreement

1 or contract entered into in furtherance of any project
2 approved wholly or in part pursuant to this Section if it
3 determines that corrupt or fraudulent practices were
4 engaged in by any individual or entity in the creation or
5 effectuation of the agreement or contract. The Commission
6 shall also seek any other remedies that may be appropriate
7 to address the corrupt or fraudulent activities; and

8 (2) have the authority to inspect and audit accounts
9 and records of any entity relating to the execution and
10 performance of any agreement or contract entered into in
11 furtherance of any project approved wholly or in part
12 pursuant to this Section.

13 (h) To inform the public and protect the unique and
14 endangered natural ecosystem of Pembroke Township, the
15 Commission shall provide public notice in an easily accessible
16 manner of any past or pending complaints, legal claims, and
17 regulatory actions concerning public safety, health, or the
18 environment involving any individual or entity, including, but
19 not limited to, a public utility, that is agreeing or
20 contracting, or has agreed or contracted, to perform work
21 related to the design, construction, installation, operation,
22 or maintenance of any natural gas pipeline approved wholly or
23 in part pursuant to this Section. Any individual or entity
24 covered by this subsection shall provide the information to
25 the Commission prior to undertaking any such work.

26 (i) Prior to construction pursuant to a certificate

1 obtained wholly or in part pursuant to this Section, whether
2 granted prior to or after the enactment of this Section, the
3 natural gas utility shall submit a compliance filing to the
4 Commission demonstrating that the preconstruction requirements
5 in paragraphs (1) and (2) are satisfied. The Commission staff
6 shall submit a report to the Commission with a recommendation
7 as to whether the preconstruction requirements have been
8 satisfied. Construction shall not commence until and unless
9 the Commission issues an order determining that the
10 preconstruction requirements have been met. The
11 preconstruction requirements include:

12 (1) The Commission, the Department of Commerce and
13 Economic Opportunity, and the Environmental Protection
14 Agency shall jointly conduct and publish a comprehensive
15 cost-benefit analysis of the project and associated risks
16 and make a finding as to whether the project is
17 net-beneficial for Pembroke Township as a whole and
18 net-beneficial for subpopulations that may be
19 differentially impacted by the project, including
20 residents of greater Pembroke Township not in the Village
21 of Hopkins Park. The analysis includes, but is not limited
22 to: socioeconomic, public health, and environmental risk
23 factors and vulnerabilities that may affect the costs and
24 benefits of the proposed project on populations within
25 Pembroke Township; an accounting of the social cost of
26 greenhouse gases; and a consideration of the unique

1 economic, environmental, and ecological impacts for
2 Pembroke Township. The cost-benefit analysis shall also
3 account for distributional impacts to ensure that it
4 appropriately benefits and does not inappropriately burden
5 disadvantaged, vulnerable, or marginalized communities.

6 (2) The Commission, jointly with any other State
7 agency it deems appropriate, shall, on its own or
8 utilizing an independent contractor, conduct a thorough
9 alternative energy analysis to compare the costs and
10 benefits of the natural gas expansion as proposed by the
11 natural gas utility and approved by the Commission in
12 granting a certificate of public convenience and necessity
13 pursuant to this Section, including design, construction,
14 installation, and operation of any natural gas pipelines
15 and distribution infrastructure in Pembroke Township and
16 the Village of Hopkins Park, relative to the costs and
17 benefits of non-gas energy alternatives, including, but
18 not limited to, building electrification, air and
19 ground-source heat pumps, photovoltaic, and other options
20 for providing environmentally sustainable utility services
21 that are affordable to local households, consumers,
22 businesses, farmers, and other industries and that meet
23 the energy needs of Pembroke Township. The alternative
24 energy analysis shall consider the social cost of
25 greenhouse gases as established by the United States
26 Office of Management and Budget Interagency Working Group

1 on the Social Cost of Greenhouse Gases, including, but not
2 limited to, methane and carbon, when comparing the
3 relative climate costs of each alternative considered. The
4 cost-benefit analysis shall also account for the
5 distributional impacts of each alternative considered to
6 ensure that it appropriately benefits and does not
7 inappropriately burden disadvantaged, vulnerable, or
8 marginalized communities. This analysis shall also
9 evaluate rate estimates for each energy option, accounting
10 for declining natural gas demand as a result of clean
11 energy adoption, natural gas prices, and other factors as
12 the Commission deems appropriate. The Commission shall
13 make a finding as to whether the proposed natural gas
14 expansion is the best alternative for meeting the energy
15 needs of Pembroke Township considering affordability,
16 sustainability, distributional impacts, and impact on the
17 affected environment.

18 The cost-benefit analysis, alternative energy analysis,
19 and any underpinning documentation shall be completed and
20 filed as a report with the General Assembly and made available
21 to the public. The natural gas utility shall be responsible
22 for reimbursing the State for the costs of the analyses.

23 If the cost-benefit analysis finds that the proposed
24 natural gas expansion is not net-beneficial for Pembroke
25 Township and the subpopulations evaluated, or if the
26 alternative energy analysis finds that the proposed natural

1 gas expansion is not the best option for meeting the energy
2 needs of Pembroke Township, then the Commission shall
3 determine that the preconstruction requirements have not been
4 satisfied and the certificate of public convenience and
5 necessity shall be revoked.

6 Where construction has begun and is in progress prior to
7 this amendatory Act of the 102nd General Assembly, that
8 construction shall halt until the Commission has made a
9 determination as to the preconstruction requirements.

10 (Source: P.A. 102-609, eff. 8-27-21.)