

118TH CONGRESS  
1ST SESSION

# S. 989

To establish a more uniform, transparent, and modern process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity.

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## IN THE SENATE OF THE UNITED STATES

MARCH 27, 2023

Mr. HOEVEN (for himself, Mr. MULLIN, Mr. SULLIVAN, and Mr. BUDD) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To establish a more uniform, transparent, and modern process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity.

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 “North American En-  
5 ergy Act”.

1 **SEC. 2. APPROVAL FOR BORDER-CROSSING FACILITIES.**

2 (a) AUTHORIZATION OF CERTAIN ENERGY INFRA-  
3 STRUCTURE PROJECTS AT AN INTERNATIONAL BOUND-  
4 ARY OF THE UNITED STATES.—

5 (1) AUTHORIZATION.—Except as provided in  
6 paragraph (3) and subsection (e), no person may  
7 construct, connect, or operate, a border-crossing fa-  
8 cility for the import or export of oil or natural gas,  
9 or the transmission of electricity, across an inter-  
10 national border of the United States without obtain-  
11 ing a certificate of crossing for the border-crossing  
12 facility under this subsection.

13 (2) CERTIFICATE OF CROSSING.—

14 (A) REQUIREMENT.—Not later than 90  
15 days after final action is taken, by the relevant  
16 official or agency identified under subparagraph  
17 (B), under the National Environmental Policy  
18 Act of 1969 (42 U.S.C. 4321 et seq.) with re-  
19 spect to a border-crossing facility for which a  
20 person requests a certificate of crossing under  
21 this subsection, the relevant official or agency,  
22 in consultation with appropriate Federal agen-  
23 cies, shall issue a certificate of crossing for the  
24 border-crossing facility unless the relevant offi-  
25 cial or agency finds that the construction, con-  
26 nection, or operation, of the border-crossing fa-

1           cility is not in the public interest of the United  
2           States.

3           (B) RELEVANT OFFICIAL OR AGENCY.—

4           The relevant official or agency referred to in  
5           subparagraph (A) is—

6                   (i) the Federal Energy Regulatory  
7                   Commission with respect to border-cross-  
8                   ing facilities consisting of oil or natural  
9                   gas pipelines; and

10                   (ii) the Secretary of Energy with re-  
11                   spect to border-crossing facilities consisting  
12                   of electric transmission facilities.

13           (C) ADDITIONAL REQUIREMENT FOR

14           ELECTRIC TRANSMISSION FACILITIES.—In the

15           case of a request for a certificate of crossing for

16           a border-crossing facility consisting of an elec-

17           tric transmission facility, the Secretary of En-

18           ergy shall require, as a condition of issuing the

19           certificate of crossing under subparagraph (A),

20           that the border-crossing facility be constructed,

21           connected, operated, or maintained consistent

22           with all applicable policies and standards of—

23                   (i) the Electric Reliability Organiza-

24                   tion and the applicable regional entity; and

1                   (ii) any Regional Transmission Orga-  
2                   nization or Independent System Operator  
3                   with operational or functional control over  
4                   the border-crossing facility.

5                   (3) EXCLUSIONS.—This subsection shall not  
6                   apply to any construction, connection, operation, or  
7                   maintenance of a border-crossing facility for the im-  
8                   port or export of oil or natural gas, or the trans-  
9                   mission of electricity—

10                   (A) if the border-crossing facility is oper-  
11                   ating for such import, export, or transmission  
12                   as of the date of enactment of this Act;

13                   (B) if a permit described in subsection (d)  
14                   for the construction, connection, operation, or  
15                   maintenance has been issued; or

16                   (C) if an application for a permit described  
17                   in subsection (d) for the construction, connec-  
18                   tion, operation, or maintenance is pending on  
19                   the date of enactment of this Act, until the ear-  
20                   lier of—

21                   (i) the date on which such application  
22                   is denied; or

23                   (ii) 2 years after the date of enact-  
24                   ment of this Act, if such a permit has not  
25                   been issued by such date.

1 (4) EFFECT OF OTHER LAWS.—

2 (A) APPLICATION TO PROJECTS.—Nothing  
3 in this subsection or subsection (e) shall affect  
4 the application of any other Federal statute to  
5 a project for which a certificate of crossing for  
6 a border-crossing facility is requested under  
7 this subsection.

8 (B) NATURAL GAS ACT.—Nothing in this  
9 subsection or subsection (e) shall affect the re-  
10 quirement to obtain approval or authorization  
11 under sections 3 and 7 of the Natural Gas Act  
12 (15 U.S.C. 717b, 717f) for the siting, construc-  
13 tion, or operation of any facility to import or  
14 export natural gas.

15 (C) OIL PIPELINES.—Nothing in this sub-  
16 section or subsection (e) shall affect the author-  
17 ity of the Federal Energy Regulatory Commis-  
18 sion with respect to oil pipelines under section  
19 60502 of title 49, United States Code.

20 (D) SCOPE OF NEPA REVIEW.—Nothing in  
21 this Act, or the amendments made by this Act,  
22 shall affect the scope of any review required to  
23 be conducted under section 102 of the National  
24 Environmental Policy Act of 1969 (42 U.S.C.  
25 4332) with respect to a project for which a cer-

1           tificate of crossing for a border-crossing facility  
2           is requested under this subsection.

3           (b) IMPORTATION OR EXPORTATION OF NATURAL  
4 GAS TO CANADA AND MEXICO.—Section 3(c) of the Nat-  
5 ural Gas Act (15 U.S.C. 717b(c)) is amended by adding  
6 at the end the following: “In the case of an application  
7 for the importation of natural gas from, or the exportation  
8 of natural gas to, Canada or Mexico, the Commission shall  
9 grant the application not later than 30 days after the date  
10 on which the Commission receives the complete applica-  
11 tion.”.

12           (c) TRANSMISSION OF ELECTRIC ENERGY TO CAN-  
13 ADA AND MEXICO.—

14           (1) REPEAL OF REQUIREMENT TO SECURE  
15 ORDER.—Section 202(e) of the Federal Power Act  
16 (16 U.S.C. 824a(e)) is repealed.

17           (2) CONFORMING AMENDMENTS.—

18           (A) STATE REGULATIONS.—Section 202(f)  
19 of the Federal Power Act (16 U.S.C. 824a(f))  
20 is amended by striking “insofar as such State  
21 regulation does not conflict with the exercise of  
22 the Commission’s powers under or relating to  
23 subsection (e)”.

24           (B) SEASONAL DIVERSITY ELECTRICITY  
25 EXCHANGE.—Section 602(b) of the Public Util-

1           ity Regulatory Policies Act of 1978 (16 U.S.C.  
2           824a–4(b)) is amended by striking “the Com-  
3           mission has conducted hearings and made the  
4           findings required under section 202(e) of the  
5           Federal Power Act” and all that follows  
6           through the period at the end and inserting  
7           “the Secretary has conducted hearings and  
8           finds that the proposed transmission facilities  
9           would not impair the sufficiency of electric sup-  
10          ply within the United States or would not im-  
11          pede or tend to impede the coordination in the  
12          public interest of facilities subject to the juris-  
13          diction of the Secretary.”.

14          (d) NO PRESIDENTIAL PERMIT REQUIRED.—No  
15          Presidential permit (or similar permit) shall be required  
16          pursuant to any provision of law or Executive order for  
17          the construction, connection, operation, or maintenance of  
18          an oil or natural gas pipeline or electric transmission facil-  
19          ity, or any border-crossing facility thereof.

20          (e) MODIFICATIONS TO AND MAINTENANCE OF EX-  
21          ISTING PROJECTS.—No certificate of crossing under sub-  
22          section (a), or permit described in subsection (d), shall be  
23          required for a modification to or maintenance of—

24                  (1) an oil or natural gas pipeline or electric  
25          transmission facility that is operating for the import

1 or export of oil or natural gas or the transmission  
2 of electricity as of the date of enactment of this Act;

3 (2) an oil or natural gas pipeline or electric  
4 transmission facility for which a permit described in  
5 subsection (d) has been issued; or

6 (3) a border-crossing facility for which a certifi-  
7 cate of crossing has previously been issued under  
8 subsection (a).

9 (f) EFFECTIVE DATES; RULEMAKING DEADLINES.—

10 (1) EFFECTIVE DATE.—Subsections (a)  
11 through (e) and the amendments made by such sub-  
12 sections shall take effect on the date that is 1 year  
13 after the date of enactment of this Act.

14 (2) RULEMAKING DEADLINES.—Each relevant  
15 official or agency described in subsection (a)(2)(B)  
16 shall—

17 (A) not later than 180 days after the date  
18 of enactment of this Act, publish in the Federal  
19 Register notice of a proposed rulemaking to  
20 carry out the applicable requirements of sub-  
21 section (a); and

22 (B) not later than 1 year after the date of  
23 enactment of this Act, publish in the Federal  
24 Register a final rule to carry out the applicable  
25 requirements of subsection (a).



1 (g) JUDICIAL REVIEW.—Any entity aggrieved by a  
2 final agency action taken under this section may obtain  
3 a review of such action by filing a petition for review in  
4 the United States Court of Appeals for any circuit wherein  
5 an applicant for authorization under this section is located  
6 or has its principal place of business, or in the United  
7 States Court of Appeals for the District of Columbia. The  
8 petition must be filed not later than 60 days after such  
9 action is taken.

10 (h) DEFINITIONS.—In this section:

11 (1) APPROPRIATE FEDERAL AGENCIES.—The  
12 term “appropriate Federal agencies” in subsection  
13 (a)(2)(A) means the Secretary of Defense, the Attor-  
14 ney General, the Secretary of the Interior, the Sec-  
15 retary of Commerce, the Secretary of Transpor-  
16 tation, the Secretary of Energy, the Secretary of  
17 Homeland Security, the Administrator of the Envi-  
18 ronmental Protection Agency, and, for applications  
19 concerning the border with Mexico, the United  
20 States Commissioner of the International Boundary  
21 and Water Commission.

22 (2) BORDER-CROSSING FACILITY.—The term  
23 “border-crossing facility” means—

24 (A) the portion of an oil pipeline between  
25 an international boundary and the first main-

1 line valve on the United States side of an inter-  
2 national boundary; and

3 (B) the portion of a natural gas pipeline or  
4 electric transmission facility that is located at  
5 an international boundary of the United States.

6 (3) ELECTRIC RELIABILITY ORGANIZATION; RE-  
7 GIONAL ENTITY.—The terms “Electric Reliability  
8 Organization” and “regional entity” have the mean-  
9 ings given those terms in section 215 of the Federal  
10 Power Act (16 U.S.C. 824o).

11 (4) INDEPENDENT SYSTEM OPERATOR; RE-  
12 GIONAL TRANSMISSION ORGANIZATION.—The terms  
13 “Independent System Operator” and “Regional  
14 Transmission Organization” have the meanings  
15 given those terms in section 3 of the Federal Power  
16 Act (16 U.S.C. 796).

17 (5) MODIFICATION.—The term “modification”  
18 includes a reversal of flow direction, change in own-  
19 ership, change in flow volume, change in product de-  
20 livered, addition or removal of an interconnection, or  
21 an adjustment to regulate flow (such as a reduction  
22 or increase in the number of pump or compressor  
23 stations or valves).

1           (6) NATURAL GAS.—The term “natural gas”  
2           has the meaning given that term in section 2 of the  
3           Natural Gas Act (15 U.S.C. 717a).

4           (7) OIL.—The term “oil” means petroleum or  
5           a petroleum product.

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