

117TH CONGRESS
1ST SESSION

S. _____

To enact the Section 401 Certification Rule, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. CAPITO (for herself, Mr. INHOFE, Mr. CRAMER, Ms. LUMMIS, Mr. SHELBY, Mr. BOOZMAN, Mr. WICKER, Mr. SULLIVAN, Ms. ERNST, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To enact the Section 401 Certification Rule, 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 “Section 401 Certifi-
5 cation Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) section 401 of the Federal Water Pollution
9 Control Act (33 U.S.C. 1341) is designed to provide
10 States and authorized Indian Tribes an important

1 tool to help protect the water quality of federally
2 regulated waters within their borders, in collabora-
3 tion with Federal agencies through the cooperative
4 federalism framework of that Act (33 U.S.C. 1251
5 et seq.);

6 (2) in the years preceding the date of enact-
7 ment of this Act, States have denied water quality
8 certifications under section 401 of the Federal
9 Water Pollution Control Act (33 U.S.C. 1341) for
10 infrastructure projects for reasons other than pro-
11 tecting water quality, such as downstream green-
12 house gas emissions;

13 (3) natural gas pipelines, coal production, and
14 electric transmissions lines are vital to ensuring that
15 the people of the United States have affordable ac-
16 cess to energy;

17 (4) in October 2021, the Energy Information
18 Administration projected that nearly half of house-
19 holds in the United States that heat primarily with
20 natural gas will spend, on average, 30 percent more
21 to heat those households as compared to the pre-
22 vious winter;

23 (5) fuel scarcity and a lack of sufficient infra-
24 structure to transport natural gas contribute to
25 higher energy prices; and

1 (6) other infrastructure projects, such as road
2 construction to support interstate commerce, are in
3 the national interest and warrant regulatory cer-
4 tainty under section 401 of the Federal Water Pollu-
5 tion Control Act (33 U.S.C. 1341).

6 **SEC. 3. ENACTMENT OF THE SECTION 401 CERTIFICATION**

7 **RULE.**

8 The final rule of the Environmental Protection Agen-
9 cy entitled “Clean Water Act Section 401 Certification
10 Rule” (85 Fed. Reg. 42210 (July 13, 2020)) is enacted
11 into law.