Memorandum of Support

S.3365 (HARCKHAM) / A.3946 (Fahy)

Title: An act to amend the environmental conservation law, in relation to requiring the disclosure of insurance information on permit applications for the construction of pipelines upon any freshwater wetlands.

Statement in support: The goals of the Climate Leadership and Community Protection Act will bring New York to near carbon neutrality by 2050, and subsequently there is an expectation that over the next 5 years there will be a gradual phase out of all new fossil fuel infrastructure construction, including gas pipelines. But even as total gas infrastructure decommissioning seems like a long term inevitability, current state and federal laws still encourage pipeline expansion. Right now, New York State is grappling with multiple proposals, from Long Island to Buffalo, to build major gas pipelines and the communities in their pathway bear a disproportionate burden of the environmental and safety risks. This includes new proposals to construct pipelines for hydrogen or “renewable” natural gas.

On September 13, 2018, a series of natural gas explosions and related fires rocked Massachusetts’ Merrimack Valley, a calamity that was caused by overpressurized gas lines and resulted in a myriad of casualties. Ultimately, the local utility, Columbia Gas of Massachusetts, was responsible for more than 80 damaged or destroyed homes, 1,829 displaced families, and serious injuries to dozens of citizens. Third-party claims related to the Merrimack Valley gas disaster were estimated at greater than $1 billion. Yet the utility was significantly underinsured and compensation for those that lost everything ended in settlements for far less.

New York is no stranger to gas pipeline disasters. An explosion in Harlem leveled two apartment buildings in 2014. A 2015 gas explosion in the East Village killed 2, injured nineteen people, and completely destroyed three buildings. The historic gas explosion that leveled Blenheim, NY in 1990 remains an open wound to the small town, as rebuilding has been difficult without adequate compensation from the responsible parties.

Communities in the crosshairs of new pipeline construction have a right to know what insurance is in place to protect them from the potential environmental and safety harms. S.3365 seeks to protect local communities by requiring that in the context of freshwater wetland permit applications for fossil fuel pipeline crossings, developers provide the name of the insurance company covering construction and operation of the pipeline, the amount of coverage, and what specifically is covered under the plan. The legislation singles out wetlands permits, because there are almost no other areas in the permitting of major pipelines where the state has the authority to regulate pipeline activity beyond blanket federal preemptions. It also makes sense because wetlands crossings are almost always an unavoidable component of pipeline construction.
This is not to say that wetlands are just a convenient legal hook, and not themselves a concern when it comes to pipelines and public safety. In 1996, the Iroquois Pipeline Co. pleaded guilty to four felony counts and paid multimillion dollar fines for overseeing hundreds of criminal violations of the Clean Water Act during the construction of a 375 milelong gas pipeline across New York state. A decade later, the construction of the Millennium Pipeline resulted in the same catastrophic erosion events and negligent destruction of aquatic habitats. State regulators once again levied fines and hundreds of enforcement actions as they sought to repair the wanton destruction of New York's water resources at the hands of pipeline developers. But fines never adequately cover the damage and seldom do financial penalties amount to a level that deters future bad actions. It is just part of doing business.

But if an insurance company was required, upfront, to identify themselves and disclose the kind of financial exposure they would be willing to take on for such pipeline projects, such an act of “sunshine” would result in more careful construction practices and oversight. Otherwise, with the upfront costs of liability, pipeline projects for the unscrupulous would be too costly and may not be undertaken at all. This bill takes a small but important step in pushing responsibility and accountability for pipeline companies so that New York communities and our environment may be better protected and avoid future fossil fuel catastrophes.

Sierra Club Atlantic Chapter Urges Your Support of S.3365.