



Legislative BulletinMay 22, 2013

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H.R. 3 – Northern Route Approval Act and Amendments

H.R. 3- Northern Route Approval Act (Terry, R-NE)

Order of Business: H.R. 3 is expected to be considered on May 22, 2013, under a structured rule, [H.Res. 228](#). The rule allows for the consideration of H.R. 3 in the Committee of the Whole House on the state of the Union. General debate shall be limited to 90 minutes equally divided and controlled by the respective chairs and ranking members of the Committees on Transportation and Infrastructure, Energy and Commerce, and Natural Resources. After general debate, the bill shall be considered for amendment under the five-minute rule. The rule makes in order the amendments summarized in this document. After amendment debate the Committee shall rise and report the bill to the House with any adopted amendments. At that time, any Member may demand a separate vote in the House on any amendment that was adopted. The rule also provides for one motion to recommit with or without instructions.

Summary: H.R. 3 waives the requirement that they Keystone XL pipeline project receive a Presidential permit, thereby approving the pipeline’s construction. The pipeline’s route shall include the Nebraska reroute evaluated in the Final Evaluation Report issued by the Nebraska Department of Environmental Quality in January 2013 and approved by the Nebraska governor.

The final environmental impact statement issued by the Secretary of State on August 26, 2011, coupled with the Final Evaluation Report described in the previous sentence, shall be considered to satisfy all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and of the National Historic Preservation Act (16 U.S.C. 470 et seq.).

Judicial Review: Except for review by the Supreme Court, the legislation grants the U.S. Court of Appeals for the District of Columbia Circuit jurisdiction to determine:

- “The validity of any final order or action (including a failure to act) of any Federal agency or officer with respect to issuance of a permit relating to the construction or maintenance of the Keystone XL pipeline, including any final order or action deemed to be taken, made, granted, or issued;

- “The constitutionality of any provision of this Act, or any decision or action taken, made, granted, or issued, or deemed to be taken, made, granted, or issued under this Act; or
- “The adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), or of any analysis under any other Act, with respect to any action taken, made, granted, or issued, or deemed to be taken, made, granted, or issued under this Act.

The legislation includes a 60 day deadline for filing a claim that may arise from the legislation. The U.S. Court of Appeals for the District of Columbia Circuit shall expedite the consideration of any claim and they shall take into account the “national interest of enhancing national energy security by providing access to the significant oil reserves in Canada that are needed to meet the demand for oil.”

American Burying Beetle: The legislation deems that the Secretary of the Interior has issued a written statement setting forth the Secretary’s opinion containing such findings under section 7(b)(1)(A) of the Endangered Species Act of 1973 and any taking of the American burying beetle that are related to the construction, operation or maintenance of the Keystone XL pipeline shall not be considered a prohibited taking of the species under such Act.

Right-of-Way and Temporary Use Permit: The legislation deems that Secretary of the Interior has granted or issued a grant of right-of-way and temporary use permit under section 28 of the Mineral Leasing Act (30 U.S.C. 185) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), as set forth in the application tendered to the Bureau of Land Management for the Keystone XL pipeline.

Permits for Activities in Navigable Waters: Within 90 days of receipt of an application, the Secretary of the Army shall issue all permits under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) and section 10 of the Act of March 3, 1899 (33 U.S.C. 403; commonly known as the Rivers and Harbors Appropriations Act of 1899). These are necessary for the construction, operation, and maintenance of the pipeline.

In the event that the Secretary does not issue this permit, the permit shall be deemed issued.

Migratory Bird Treaty Act Permit: The legislation deems that Secretary of the Interior has issued a special purpose permit under the Migratory Bird Treaty Act (16 U.S. C. 703 et seq.).

Findings: The legislation contains several findings, including:

- “The delivery of oil from Canada, a close ally not only in proximity but in shared values and ideals, to domestic markets is in the national interest because of the need to lessen dependence upon insecure foreign sources;

- “The Keystone XL pipeline would provide both short-term and long-term employment opportunities and related labor income benefits, such as government revenues associated with taxes;
- “The State of Nebraska has thoroughly reviewed and approved the proposed Keystone XL pipeline reroute, concluding that the concerns of Nebraskans have had a major influence on the pipeline reroute and that the reroute will have minimal environmental impacts;
- “The Department of State and other Federal agencies have over a long period of time conducted extensive studies and analysis of the technical aspects and of the environmental, social, and economic impacts of the proposed Keystone XL pipeline; and
- “The Keystone XL is in much the same position today as the Alaska Pipeline in 1973 prior to congressional action. Once again, the Federal regulatory process remains an insurmountable obstacle to a project that is likely to reduce oil imports from insecure foreign sources.”

Amendments Made In Order: The rule makes in order the following amendments:

Weber (R-TX): The amendment adds multiple findings to the legislation, including:

- “The Department of State assessments found that the Keystone XL pipeline “is not likely to impact the amount of crude oil produced from the oil sands” and that “approval or denial of the proposed project is unlikely to have a substantial impact on the rate of development in the oil sands”;
- “The Department of State found that incremental life-cycle greenhouse gas emissions associated with the Keystone XL project are estimated in the range of 0.07 to 0.83 million metric tons of carbon dioxide equivalents, with the upper end of this range representing twelve one-thousandths of one percent of the 6,702 million metric tons of carbon dioxide emitted in the United States in 2011; and
- “Transportation of oil via pipeline has a record of unmatched safety and environmental protection, and the Department of State found that “Spills associated with the proposed Project that enter the environment expected to be rare and relatively small”, and that “there is no evidence of increased corrosion or other pipeline threat due to viscosity” of diluted bitumen oil that will be transported by the Keystone XL pipeline;

The text of the amendment can be [viewed here](#).

Waxman (D-CA): The amendment adds the following finding to the legislation:

- “The Draft Supplemental Environmental Impact Statement for the Keystone XL Project issued by the Department of State on March 1, 2013, finds that “the reliance on oil sands crudes for transportation fuels would likely result in an increase in incremental greenhouse gas emissions” in comparison to the greenhouse gas emissions from the crude oils used in the United States, as measured over the full life-cycle of the fuels. The Draft Supplemental

Environmental Impact Statement finds that based on the quantity of tar sands crude to be transported by the Keystone XL pipeline, there could be up to 20.8 million metric tons of carbon dioxide-equivalent emissions additional per year, which is equivalent to the annual emissions from 4,312,500 passenger vehicles.”

The amendment also adds a new section to the end of the legislation. This section prohibits the act from coming into effect unless the “President finds that the additional greenhouse gas emissions from the increased use of tar sands crude referenced” in the bill “will be fully offset by TransCanada or tar sands producers through an equal quantity of additional greenhouse gas emissions reductions each year.” The text of the amendment can be [viewed here](#).

Johnson (D-GA): The amendment prohibits the act from coming into effect unless the President has determined that the appropriate agency has completed a health study of the health impacts of increased air pollution in communities near refineries that will process the tar sands crude. The text of the amendment can be [viewed here](#).

Connolly (D-VA): The amendment prohibits the approval of the pipeline construction permit until the Pipeline and Hazardous Materials Safety Administration, conduct a threat assessment and study the vulnerabilities of the pipeline to terrorist attack. The Pipeline and Hazardous Materials Safety Administration must certify that the necessary protections have been put in place so that the pipeline would withstand such an attack and a spill resulting from the attack. The text of the amendment can be [viewed here](#).

Rahall (D-WV) and DeFazio (D-OR): The amendment strikes language in the underlying bill that approves construction of the Keystone XL permit. The text of the amendment can be [viewed here](#).

Esty (D-CT): The amendment removes the Court of Appeals for the District of Columbia Circuit’s jurisdiction relating to the pipeline’s “maintenance.”

The underlying text states that “any taking of the American burying beetle that is incidental to the construction or operation and maintenance of the Keystone XL pipeline,” as it relates to the Endangered Species Act. This amendment removes “operation and maintenance” from being excluded from the waiver that is given to the Endangered Species Act and the Federal Water Pollution Control Act. The text of the amendment can be [viewed here](#).

Jackson Lee (D-TX): The amendment lengthens the deadline for filing a claim that may arise from the legislation from 60 days to 1 year. The text of the amendment can be [viewed here](#).

Chu (D-CA), Polis (D-CO), and Connolly (D-VA): The amendment adds a new section to the bill that direct the Comptroller General to study the Keystone XL pipeline project to determine the total costs associated with cleanup activities that would be required in

the event of a spill. The study would also estimate the potential impacts of such a spill on public health and the environment. The text of the amendment can be [viewed here](#).

Cohen (D-TN): The amendment adds a new section to the bill that directs the pipeline owner to develop an oil spill response plan for the pipeline. The text of the amendment can be [viewed here](#).

Holt (D-NJ): The amendment prohibits the legislation from taking effect until the President determines that any crude oil and bitumen transported in the pipeline (including all refined petroleum products) will be entered into domestic commerce, and not exported. The text of the amendment can be [viewed here](#).

Quick Facts from the Energy and Commerce Committee:

- According to the Department of Energy, Keystone XL would be able to move up to **830,000 barrels** of oil per day. This represents about half the amount the U.S. imports from the Middle East.
- TransCanada [estimates](#) it will spend **\$7 billion** in the U.S. to build the pipeline and **20,000 jobs** would be directly created from the pipeline's construction.
- Keystone XL would [generate much needed tax revenue](#) in several states and collectively boost Gross State Product by billions of dollars.
- By delaying approval of the pipeline, President Obama is providing [China with an opportunity](#) to out-compete the U.S. and gain access to Canada's rich oil supply.
- Several labor unions have [endorsed](#) the project and [criticized](#) the president's decision to reject American jobs.
- Even [Chris Matthews](#) described President Obama's rejection of Keystone XL as a "**mistake.**"

Much more additional information about the Keystone XL pipeline project can be [viewed here](#).

Outside Group Support:

Americans For Prosperity - *scoring as a key vote*

Freedom Action – *scoring as a key vote*

Committee Action: H.R. 3 was introduced on March 15, 2013, and was referred to the House Transportation and Infrastructure Committee. A markup was held on May 16, 2013, and the legislation was approved by a [recorded vote of 33-24-1](#).

The legislation was also referred to the Energy and Commerce [Subcommittee on Energy and Power](#). On April 16, 2013, the Subcommittee on Energy and Power held a markup and approved H.R. 3, without amendment, by a vote of [17 yeas and 9 nays](#). On April 17, 2013, the [Energy and Commerce Committee](#) held a markup and ordered H.R. 3 reported to the House, without amendment, by a [recorded vote of 30 - 18](#).

Additionally, the legislation was referred to the Natural Resources Subcommittee on Energy and Mineral Resources, the Subcommittee on Public Lands and Environmental Regulation, and the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs. On April 16, 2013, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On April 24, 2013, the full [Natural Resources Committee](#) held a markup and approved the legislation by a [recorded vote of 24-17](#).

Previous House Action: On February 12, 2012, the House of Representatives passed H.R. 3408, which was a compilation of energy bills. H.R. 3408 included titles XIV and XVII of Rules Committee Print 112-12 of H.R. 7. Title XIV included text similar to H.R. 3548, which approved the construction permit for the project. H.R. 3408 passed by a roll call vote of 237-187, and the RSC’s Legislative Bulletin can be [viewed here](#).

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: CBO estimates implementing H.R. 3 would have no significant impact on the federal budget. CBO’s estimate can be [viewed here](#).

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, H.R. 3 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation contains no earmarks, limited tax benefits or limited tariff benefits.

Constitutional Authority: According the sponsor, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3 Article III, Section 2, Clause 2.” Rep. Terry’s statement in the Congressional Record can be [viewed here](#).

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