

Calendar No. 81

113TH CONGRESS
1ST SESSION**H. R. 3**

IN THE SENATE OF THE UNITED STATES

MAY 23, 2013

Received; read the first time

JUNE 3, 2013

Read the second time and placed on the calendar

AN ACT

To approve the construction, operation, and maintenance of the Keystone XL pipeline, 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 “Northern Route Ap-
5 proval Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) To maintain our Nation’s competitive edge
9 and ensure an economy built to last, the United
10 States must have fast, reliable, resilient, and envi-

1 ronmentally sound means of moving energy. In a
2 global economy, we will compete for the world's in-
3 vestments based in significant part on the quality of
4 our infrastructure. Investing in the Nation's infra-
5 structure provides immediate and long-term eco-
6 nomic benefits for local communities and the Nation
7 as a whole.

8 (2) The delivery of oil from Canada, a close ally
9 not only in proximity but in shared values and
10 ideals, to domestic markets is in the national inter-
11 est because of the need to lessen dependence upon
12 insecure foreign sources.

13 (3) The Keystone XL pipeline would provide
14 both short-term and long-term employment opportu-
15 nities and related labor income benefits, such as gov-
16 ernment revenues associated with taxes.

17 (4) The State of Nebraska has thoroughly re-
18 viewed and approved the proposed Keystone XL
19 pipeline reroute, concluding that the concerns of Ne-
20 braskans have had a major influence on the pipeline
21 reroute and that the reroute will have minimal envi-
22 ronmental impacts.

23 (5) The Department of State and other Federal
24 agencies have over a long period of time conducted
25 extensive studies and analysis of the technical as-

1 pects and of the environmental, social, and economic
2 impacts of the proposed Keystone XL pipeline,
3 and—

4 (A) the Department of State assessments
5 found that the Keystone XL pipeline “is not
6 likely to impact the amount of crude oil pro-
7 duced from the oil sands” and that “approval
8 or denial of the proposed project is unlikely to
9 have a substantial impact on the rate of devel-
10 opment in the oil sands”;

11 (B) the Department of State found that
12 incremental life-cycle greenhouse gas emissions
13 associated with the Keystone XL project are es-
14 timated in the range of 0.07 to 0.83 million
15 metric tons of carbon dioxide equivalents, with
16 the upper end of this range representing twelve
17 one-thousandths of one percent of the 6,702
18 million metric tons of carbon dioxide emitted in
19 the United States in 2011; and

20 (C) after extensive evaluation of potential
21 impacts to land and water resources along the
22 Keystone XL pipeline’s 875 mile proposed
23 route, the Department of State found that
24 “The analyses of potential impacts associated
25 with construction and normal operation of the

1 proposed Project suggest that there would be
2 no significant impacts to most resources along
3 the proposed Project route (assuming Keystone
4 complies with all laws and required conditions
5 and measures).”.

6 (6) The transportation of oil via pipeline is the
7 safest and most economically and environmentally
8 effective means of doing so, and—

9 (A) transportation of oil via pipeline has a
10 record of unmatched safety and environmental
11 protection, and the Department of State found
12 that “Spills associated with the proposed
13 Project that enter the environment expected to
14 be rare and relatively small”, and that “there
15 is no evidence of increased corrosion or other
16 pipeline threat due to viscosity” of diluted bitu-
17 men oil that will be transported by the Key-
18 stone XL pipeline; and

19 (B) plans to incorporate 57 project-specific
20 special conditions related to the design, con-
21 struction, and operations of the Keystone XL
22 pipeline led the Department of State to find
23 that the pipeline will have “a degree of safety
24 over any other typically constructed domestic oil
25 pipeline”.

1 (7) The Keystone XL is in much the same posi-
2 tion today as the Alaska Pipeline in 1973 prior to
3 congressional action. Once again, the Federal regu-
4 latory process remains an insurmountable obstacle
5 to a project that is likely to reduce oil imports from
6 insecure foreign sources.

7 **SEC. 3. KEYSTONE XL PERMIT APPROVAL.**

8 Notwithstanding Executive Order No. 13337 (3
9 U.S.C. 301 note), Executive Order No. 11423 (3 U.S.C.
10 301 note), section 301 of title 3, United States Code, and
11 any other Executive order or provision of law, no Presi-
12 dential permit shall be required for the pipeline described
13 in the application filed on May 4, 2012, by TransCanada
14 Keystone Pipeline, L.P. to the Department of State for
15 the Keystone XL pipeline, as supplemented to include the
16 Nebraska reroute evaluated in the Final Evaluation Re-
17 port issued by the Nebraska Department of Environ-
18 mental Quality in January 2013 and approved by the Ne-
19 braska governor. The final environmental impact state-
20 ment issued by the Secretary of State on August 26, 2011,
21 coupled with the Final Evaluation Report described in the
22 previous sentence, shall be considered to satisfy all re-
23 quirements of the National Environmental Policy Act of
24 1969 (42 U.S.C. 4321 et seq.) and of the National His-
25 toric Preservation Act (16 U.S.C. 470 et seq.).

1 **SEC. 4. JUDICIAL REVIEW.**

2 (a) **EXCLUSIVE JURISDICTION.**—Except for review by
3 the Supreme Court on writ of certiorari, the United States
4 Court of Appeals for the District of Columbia Circuit shall
5 have original and exclusive jurisdiction to determine—

6 (1) the validity of any final order or action (in-
7 cluding a failure to act) of any Federal agency or of-
8 ficer with respect to issuance of a permit relating to
9 the construction or maintenance of the Keystone XL
10 pipeline, including any final order or action deemed
11 to be taken, made, granted, or issued;

12 (2) the constitutionality of any provision of this
13 Act, or any decision or action taken, made, granted,
14 or issued, or deemed to be taken, made, granted, or
15 issued under this Act; or

16 (3) the adequacy of any environmental impact
17 statement prepared under the National Environ-
18 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.),
19 or of any analysis under any other Act, with respect
20 to any action taken, made, granted, or issued, or
21 deemed to be taken, made, granted, or issued under
22 this Act.

23 (b) **DEADLINE FOR FILING CLAIM.**—A claim arising
24 under this Act may be brought not later than 60 days
25 after the date of the decision or action giving rise to the
26 claim.

1 (c) EXPEDITED CONSIDERATION.—The United
2 States Court of Appeals for the District of Columbia Cir-
3 cuit shall set any action brought under subsection (a) for
4 expedited consideration, taking into account the national
5 interest of enhancing national energy security by providing
6 access to the significant oil reserves in Canada that are
7 needed to meet the demand for oil.

8 **SEC. 5. AMERICAN BURYING BEETLE.**

9 (a) FINDINGS.—The Congress finds that—

10 (1) environmental reviews performed for the
11 Keystone XL pipeline project satisfy the require-
12 ments of section 7 of the Endangered Species Act of
13 1973 (16 U.S.C. 1536(a)(2)) in its entirety; and

14 (2) for purposes of that Act, the Keystone XL
15 pipeline project will not jeopardize the continued ex-
16 istence of the American burying beetle or destroy or
17 adversely modify American burying beetle critical
18 habitat.

19 (b) BIOLOGICAL OPINION.—The Secretary of the In-
20 terior is deemed to have issued a written statement setting
21 forth the Secretary’s opinion containing such findings
22 under section 7(b)(1)(A) of the Endangered Species Act
23 of 1973 (16 U.S.C. 1536(b)(1)(A)) and any taking of the
24 American burying beetle that is incidental to the construc-
25 tion or operation and maintenance of the Keystone XL

1 pipeline as it may be ultimately defined in its entirety,
2 shall not be considered a prohibited taking of such species
3 under such Act.

4 **SEC. 6. RIGHT-OF-WAY AND TEMPORARY USE PERMIT.**

5 The Secretary of the Interior is deemed to have
6 granted or issued a grant of right-of-way and temporary
7 use permit under section 28 of the Mineral Leasing Act
8 (30 U.S.C. 185) and the Federal Land Policy and Man-
9 agement Act of 1976 (43 U.S.C. 1701 et seq.), as set forth
10 in the application tendered to the Bureau of Land Man-
11 agement for the Keystone XL pipeline.

12 **SEC. 7. PERMITS FOR ACTIVITIES IN NAVIGABLE WATERS.**

13 (a) ISSUANCE OF PERMITS.—The Secretary of the
14 Army, not later than 90 days after receipt of an applica-
15 tion therefor, shall issue all permits under section 404 of
16 the Federal Water Pollution Control Act (33 U.S.C. 1344)
17 and section 10 of the Act of March 3, 1899 (33 U.S.C.
18 403; commonly known as the Rivers and Harbors Appro-
19 priations Act of 1899), necessary for the construction, op-
20 eration, and maintenance of the pipeline described in the
21 May 4, 2012, application referred to in section 3, as sup-
22 plemented by the Nebraska reroute. The application shall
23 be based on the administrative record for the pipeline as
24 of the date of enactment of this Act, which shall be consid-
25 ered complete.

1 (b) WAIVER OF PROCEDURAL REQUIREMENTS.—The
2 Secretary may waive any procedural requirement of law
3 or regulation that the Secretary considers desirable to
4 waive in order to accomplish the purposes of this section.

5 (c) ISSUANCE IN ABSENCE OF ACTION BY THE SEC-
6 RETARY.—If the Secretary has not issued a permit de-
7 scribed in subsection (a) on or before the last day of the
8 90-day period referred to in subsection (a), the permit
9 shall be deemed issued under section 404 of the Federal
10 Water Pollution Control Act (33 U.S.C. 1344) or section
11 10 of the Act of March 3, 1899 (33 U.S.C. 403), as appro-
12 priate, on the day following such last day.

13 (d) LIMITATION.—The Administrator of the Environ-
14 mental Protection Agency may not prohibit or restrict an
15 activity or use of an area that is authorized under this
16 section.

17 **SEC. 8. MIGRATORY BIRD TREATY ACT PERMIT.**

18 The Secretary of the Interior is deemed to have
19 issued a special purpose permit under the Migratory Bird
20 Treaty Act (16 U.S.C. 703 et seq.), as described in the
21 application filed with the United States Fish and Wildlife
22 Service for the Keystone XL pipeline on January 11,
23 2013.

1 **SEC. 9. OIL SPILL RESPONSE PLAN DISCLOSURE.**

2 (a) IN GENERAL.—Any pipeline owner or operator
3 required under Federal law to develop an oil spill response
4 plan for the Keystone XL pipeline shall make such plan
5 available to the Governor of each State in which such pipe-
6 line operates to assist with emergency response prepared-
7 ness.

8 (b) UPDATES.—A pipeline owner or operator required
9 to make available to a Governor a plan under subsection
10 (a) shall make available to such Governor any update of
11 such plan not later than 7 days after the date on which
12 such update is made.

Passed the House of Representatives May 22, 2013.

Attest:

KAREN L. HAAS,

Clerk.

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