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SENATE

{ REPORT
{ 113-200

KEYSTONE XL PIPELINE

JUNE 26, 2014.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 2554]

The Committee on Energy and Natural Resources, having considered the same, reports favorably an original bill (S. 2554) to approve the Keystone XL Pipeline, and recommends that the bill do pass.

The text of the bill is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Keystone XL Pipeline Approval Act”.

SEC. 2. KEYSTONE XL APPROVAL.

(a) IN GENERAL.—TransCanada Keystone Pipeline, L.P. may construct, connect, operate, and maintain the pipeline and cross-border facilities described in the application filed on May 4, 2012, by TransCanada Corporation to the Department of State (including any subsequent revision to the pipeline route within the State of Nebraska required or authorized by the State of Nebraska).

(b) ENVIRONMENTAL IMPACT STATEMENT.—The Final Supplemental Environmental Impact Statement issued by the Secretary of State in January 2014, regarding the pipeline referred to in subsection (a), and the environmental analysis, consultation, and review described in that document (including appendices) shall be considered to fully satisfy—

(1) all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(2) any other provision of law that requires Federal agency consultation or review (including the consultation or review required under section 7(a) of the Endangered Species Act of

1973 (16 U.S.C. 1536(a)) with respect to the pipeline and facilities referred to in subsection (a).

(c) PERMITS.—Any Federal permit or authorization issued before the date of enactment of this Act for the pipeline and cross-border facilities referred to in subsection (a) shall remain in effect.

(d) JUDICIAL REVIEW.—Except for review in the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency regarding the pipeline and cross-border facilities described in subsection (a), and the related facilities in the United States, that are approved by this Act (including any order granting a permit or right-of-way, or any other agency action taken to construct or complete the project pursuant to Federal law).

(e) PRIVATE PROPERTY SAVINGS CLAUSE.—Nothing in this Act alters any Federal, State, or local process or condition in effect on the date of enactment of this Act that is necessary to secure access from an owner of private property to construct the pipeline and cross-border facilities described in subsection (a).

PURPOSE

The purpose of the measure is to approve the Keystone XL Pipeline.

BACKGROUND AND NEED

Although the Federal Government does not generally regulate the siting of oil pipelines, the President has, for more than a century, asserted authority to approve energy and telecommunication facilities that cross international borders pursuant to his constitutional authority over foreign affairs. See *Sierra Club v. Clinton*, 689 F. Supp. 2d 1147, 1163 (D. Minn. 2010). In 1968, President Johnson delegated his authority to issue or deny applications for Presidential permits for cross-border oil pipelines to the Secretary of State, based upon the Secretary's determination of whether issuance of the permit would serve the national interest. Executive Order 11423, 33 Fed. Reg. 11741 (Aug. 16, 1968). President George W. Bush affirmed President Johnson's delegation to the Secretary of State in 2004. Executive Order 13337, 69 Fed. Reg. 25299 (May 5, 2004).

TransCanada Keystone Pipeline, LP, ("TransCanada"), a Canadian company, proposes to build and operate an oil pipeline, known as the "Keystone XL pipeline," to transport heavy crude oil across the border with Canada to the Gulf Coast area. In addition, the project will also provide transportation of light crude oil from the Bakken formation in North Dakota and Montana. TransCanada already operates another cross-border pipeline, known simply as the "Keystone pipeline," which runs from Hardisty, Alberta, crosses the border in North Dakota, and ends in Patoka, Illinois. It received a Presidential permit in March 2008 and began operating in June 2010. In the case of the original Keystone pipeline, the Department of State determined that the pipeline was in the national interest because it increased market access to crude oil supplies from "a stable and reliable trading partner, Canada, that is in close proximity to the United States."

In September 2008, TransCanada applied for a Presidential permit for the Keystone XL pipeline. This second pipeline will have the capacity to transport 830,000 barrels of oil per day, including 730,000 barrels per day from Canada, and 100,000 barrels per day from the Bakken formation of North Dakota and Montana. It will provide both Canadian and American oil producers greater access to the large refining markets in the American Midwest and Gulf Coast. Like the earlier Keystone pipeline, the Keystone XL pipeline will strengthen North American energy ties and provide a safe, secure supply of oil from a reliable stable and reliable trading partner.

The Department of State published a final environmental impact statement on the proposed project in August 2011. In November 2011, however, the Department determined that additional information was needed to act on the application.

In December 2011, Congress passed and the President signed into law the Temporary Payroll Tax Cut Continuation Act. Section 501 of that Act required the President, acting through the Secretary of State, to grant the Presidential permit for the Keystone XL pipeline “not later than 60 days” after December 23, 2011. Public Law 112–78, 501(a), 125 Stat. 1289. On January 18, 2012, the Secretary of State recommended that the President deny the permit, “based on the fact that the Department does not have sufficient time to obtain the information necessary to assess whether the project, in its current state, is in the national interest.” The President accepted the Secretary of State’s recommendation, stating that it was “not a judgment on the merits of the pipeline, but the arbitrary nature of a deadline that prevented the State Department from gathering the information necessary to approve the project”

In February 2012, TransCanada announced that it would proceed with the construction of the pipeline from Cushing, Oklahoma, to the Gulf Coast, for which a Presidential permit was not required (since it did not cross the border with Canada). Construction of that portion of the pipeline is now complete. It began operating in January 2014.

In May 2012, TransCanada filed a new application for a Presidential permit for the project. The new application proposed a modified route, which avoids the environmentally sensitive Sand Hills region in Nebraska and terminates near Steele City, Nebraska. From Steele City, oil would be transported through the so-called “Cushing Extension,” from Steele City, Nebraska, to Cushing, Oklahoma, which began operating in February 2011, and the “Gulf Coast Project,” from Cushing, Oklahoma, to Nederland, Texas, which began operating in January 2014.

On January 31, 2014, the Department of State released a final supplemental environmental impact statement on the modified Keystone XL project. Pursuant to Executive Order 13337, the Department is required to solicit the views of the Departments of Energy, Defense, Transportation, Homeland Security, Justice, the Interior, and Commerce, and the Environmental Protection Agency. On April 18, 2014, the Department of State notified the eight agencies that it would provide more time for them to submit their views on the project. It cited both “the uncertainty created by the ongoing litigation in the Nebraska Supreme Court which could ulti-

mately affect the pipeline route in that state,” and the “unprecedented number of new public comments, approximately 2.5 million, received during the public comment period that closed on March 7, 2014,” for giving the agencies more time. The State Department stated that it was “actively continuing” its work on the permit application, but offered no target date for bringing its review to a close and making a final decision on TransCanada’s permit application.

Legislation is needed to bring to a close the review of the permit application, which is now in its fifth year, by authorizing the construction, connection, operation, and maintenance of the Keystone XL pipeline and cross-border facilities.

LEGISLATIVE HISTORY

Similar legislation (S. 582 and S. 2280) was introduced by Senator Hoeven on March 18, 2013 (S. 582) and on May 5, 2014 (S. 2280). S. 582 is cosponsored by 27 Senators, and S. 2280 is cosponsored by 55 Senators. Both bills were placed directly on the Calendar pursuant to rule XIV.

In addition, similar measures have been incorporated as part of more comprehensive bills that have been referred to the Committee on Energy and Natural Resources. See S. 17, §309 (Mr. Vitter); S. 2170, §2012 (Mr. Cruz). See also S. Con. Res. 21 (Ms. Landrieu) (expressing the sense of the Senate that “completion of the Keystone XL pipeline is in the national interest of the United States”).

Similar legislation (H.R. 3) was also passed by the House of Representatives on May 22, 2013, by a vote of 241–175, and was placed on the Senate Legislative Calendar under rule XIV.

The Committee ordered the measure favorably reported as an original bill on June 18, 2014.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on June 18, 2014, by a majority voice vote of a quorum present, recommends that the Senate pass an original bill, as described herein.

The roll call vote on reporting the measure was 12 yeas, 10 nays, as follows:

YEAS	NAYS
Ms. Landrieu	Mr. Wyden *
Mr. Manchin	Mr. Johnson *
Ms. Murkowski	Ms. Cantwell
Mr. Barrasso	Mr. Sanders
Mr. Risch	Ms. Stabenow
Mr. Lee *	Mr. Udall
Mr. Heller *	Mr. Franken
Mr. Flake	Mr. Schatz *
Mr. Scott	Mr. Heinrich
Mr. Alexander *	Ms. Baldwin *
Mr. Portman	
Mr. Hoeven	

* Indicates vote by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title for the measure.

Section 2(a) authorizes TransCanada to construct, connect, operate and maintain the Keystone XL pipeline and cross-border facilities described in the application TransCanada filed on May 4, 2012, including any subsequent revision to the pipeline rout within the State of Nebraska required or authorized by the State of Nebraska.

Subsection (b) provides that the Final Supplemental Environmental Impact Statement on the Keystone XL Project issued by the Secretary of State in January 2014 shall be considered to satisfy the National Environmental Policy Act and any other provision of law that requires Federal agency consultation or review, including section 7(a) of the Endangered Species Act of 1973, with respect to the Keystone XL pipeline and cross-border facilities.

Subsection (c) provides that any Federal permit or authorization for the Keystone XL pipeline and cross-border facilities issued before the date of enactment of the measure shall remain in effect.

Subsection (d) gives the United States Court of Appeals for the District of Columbia Circuit original and exclusive jurisdiction, except for review in the Supreme Court of the United States, for the review of any order or action of a Federal agency regarding the Keystone XL pipeline and cross-border facilities and related facilities in the United States that are approved by the measure (including any order granting a permit or right-of-way, or any other agency action taken to construct or complete the project pursuant to Federal law).

Subsection (e) states that nothing in the measure alters any Federal, State, or local process or condition in effect on the date of enactment that is necessary to secure access from an owner of private property to construct the Keystone XL pipeline and cross-border facilities.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at www.cbo.gov.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out the bill.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 363, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

The bill, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The Committee did not request the views of the Administration on the measure.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill as ordered reported.

