

Calendar No. 308

112TH CONGRESS
2D SESSION

S. 2041

To approve the Keystone XL pipeline project and provide for environmental protection and government oversight.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2012

Mr. HOEVEN (for himself, Mr. LUGAR, Mr. VITTER, Mr. McCONNELL, Mr. JOHANNNS, Mr. PORTMAN, Mr. BARRASSO, Mr. McCAIN, Mr. CORNYN, Mrs. HUTCHISON, Mr. THUNE, Mr. SESSIONS, Mr. ALEXANDER, Mr. MORAN, Ms. AYOTTE, Mr. BOOZMAN, Mr. DEMINT, Mr. PAUL, Ms. MURKOWSKI, Mr. KYL, Mr. MANCHIN, Mr. LEE, Mr. BLUNT, Mr. INHOFE, Mr. TOOMEY, Mr. HATCH, Mr. BURR, Mr. CHAMBLISS, Mr. COATS, Mr. CORKER, Mr. COBURN, Mr. COCHRAN, Mr. CRAPO, Mr. GRAHAM, Mr. ENZI, Mr. GRASSLEY, Mr. HELLER, Mr. ISAKSON, Mr. JOHNSON of Wisconsin, Mr. RISCH, Mr. ROBERTS, Mr. RUBIO, Mr. SHELBY, Mr. WICKER, and Mr. BROWN of Massachusetts) introduced the following bill; which was read the first time

JANUARY 31, 2012

Read the second time and placed on the calendar

A BILL

To approve the Keystone XL pipeline project and provide for environmental protection and government oversight.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. APPROVAL OF KEYSTONE XL PIPELINE**
2 **PROJECT.**

3 (a) APPROVAL OF CROSS-BORDER FACILITIES.—

4 (1) IN GENERAL.—In accordance with section 8
5 of article 1 of the Constitution (delegating to Con-
6 gress the power to regulate commerce with foreign
7 nations), TransCanada Keystone Pipeline, L.P. is
8 authorized to construct, connect, operate, and main-
9 tain pipeline facilities, subject to subsection (c), for
10 the import of crude oil and other hydrocarbons at
11 the United States-Canada Border at Phillips Coun-
12 ty, Montana, in accordance with the application filed
13 with the Department of State on September 19,
14 2008 (as supplemented and amended).

15 (2) PERMIT.—Notwithstanding any other provi-
16 sion of law, no permit pursuant to Executive Order
17 13337 (3 U.S.C. 301 note) or any other similar Ex-
18 ecutive Order regulating construction, connection,
19 operation, or maintenance of facilities at the borders
20 of the United States, and no additional environ-
21 mental impact statement, shall be required for
22 TransCanada Keystone Pipeline, L.P. to construct,
23 connect, operate, and maintain the facilities de-
24 scribed in paragraph (1).

25 (b) CONSTRUCTION AND OPERATION OF KEYSTONE
26 XL PIPELINE IN UNITED STATES.—

1 (1) IN GENERAL.—The final environmental im-
2 pact statement issued by the Department of State
3 on August 26, 2011, shall be considered to satisfy
4 all requirements of the National Environmental Pol-
5 icy Act of 1969 (42 U.S.C. 4321 et seq.) and any
6 other provision of law that requires Federal agency
7 consultation or review with respect to the cross-bor-
8 der facilities described in subsection (a)(1) and the
9 related facilities in the United States described in
10 the application filed with the Department of State
11 on September 19, 2008 (as supplemented and
12 amended).

13 (2) PERMITS.—Any Federal permit or author-
14 ization issued before the date of enactment of this
15 Act for the cross-border facilities described in sub-
16 section (a)(1), and the related facilities in the
17 United States described in the application filed with
18 the Department of State on September 19, 2008 (as
19 supplemented and amended), shall remain in effect.

20 (c) CONDITIONS.—In constructing, connecting, oper-
21 ating, and maintaining the cross-border facilities described
22 in subsection (a)(1) and related facilities in the United
23 States described in the application filed with the Depart-
24 ment of State on September 19, 2008 (as supplemented

1 and amended), TransCanada Keystone Pipeline, L.P. shall
2 comply with the following conditions:

3 (1) TransCanada Keystone Pipeline, L.P. shall
4 comply with all applicable Federal and State laws
5 (including regulations) and all applicable industrial
6 codes regarding the construction, connection, oper-
7 ation, and maintenance of the facilities.

8 (2) Except as provided in subsection (a)(2),
9 TransCanada Keystone Pipeline, L.P. shall comply
10 with all requisite permits from Canadian authorities
11 and applicable Federal, State, and local government
12 agencies in the United States.

13 (3) TransCanada Keystone Pipeline, L.P. shall
14 take all appropriate measures to prevent or mitigate
15 any adverse environmental impact or disruption of
16 historic properties in connection with the construc-
17 tion, connection, operation, and maintenance of the
18 facilities.

19 (4) The construction, connection, operation, and
20 maintenance of the facilities shall be—

21 (A) in all material respects, similar to that
22 described in—

23 (i) the application filed with the De-
24 partment of State on September 19, 2008
25 (as supplemented and amended); and

1 (ii) the final environmental impact
2 statement described in subsection (b)(1);
3 and

4 (B) carried out in accordance with—

5 (i) the construction, mitigation, and
6 reclamation measures agreed to for the
7 project in the construction mitigation and
8 reclamation plan contained in appendix B
9 of the final environmental impact state-
10 ment described in subsection (b)(1);

11 (ii) the special conditions agreed to
12 between the owners and operators of the
13 project and the Administrator of the Pipe-
14 line and Hazardous Materials Safety Ad-
15 ministration of the Department of Trans-
16 portation, as contained in appendix U of
17 the final environmental impact statement;

18 (iii) the measures identified in appen-
19 dix H of the final environmental impact
20 statement, if the modified route submitted
21 by the State of Nebraska to the Secretary
22 of State crosses the Sand Hills region; and

23 (iv) the stipulations identified in ap-
24 pendix S of the final environmental impact
25 statement.

1 (d) ROUTE IN NEBRASKA.—

2 (1) IN GENERAL.—Any route and construction,
3 mitigation, and reclamation measures for the project
4 in the State of Nebraska that is identified by the
5 State of Nebraska and submitted to the Secretary of
6 State under this section is considered sufficient for
7 the purposes of this section.

8 (2) PROHIBITION.—Construction of the facili-
9 ties in the United States described in the application
10 filed with the Department of State on September 19,
11 2008 (as supplemented and amended), shall not
12 commence in the State of Nebraska until the date
13 on which the Secretary of State receives a route for
14 the project in the State of Nebraska that is identi-
15 fied by the State of Nebraska.

16 (3) RECEIPT.—On the date of receipt of the
17 route described in paragraph (1) by the Secretary of
18 State, the route for the project within the State of
19 Nebraska under this section shall supersede the
20 route for the project in the State specified in the ap-
21 plication filed with the Department of State on Sep-
22 tember 19, 2008 (including supplements and amend-
23 ments).

24 (4) COOPERATION.—Not later than 30 days
25 after the date on which the State of Nebraska sub-

1 mits a request to the Secretary of State or any ap-
2 propriate Federal official, the Secretary of State or
3 Federal official shall provide assistance that is con-
4 sistent with the law of the State of Nebraska.

5 (e) ADMINISTRATION.—

6 (1) IN GENERAL.—Any action taken to carry
7 out this section (including the modification of any
8 route under subsection (d)) shall not constitute a
9 major Federal action under the National Environ-
10 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

11 (2) STATE SITING AUTHORITY.—Nothing in
12 this section alters any provision of State law relating
13 to the siting of pipelines.

14 (3) PRIVATE PROPERTY.—Nothing in this sec-
15 tion alters any Federal, State, or local process or
16 condition in effect on the date of enactment of this
17 Act that is necessary to secure access from an owner
18 of private property to construct the project.

19 (f) FEDERAL JUDICIAL REVIEW.—The cross-border
20 facilities described in subsection (a)(1), and the related fa-
21 cilities in the United States described in the application
22 filed with the Department of State on September 19, 2008
23 (as supplemented and amended), that are approved by this
24 section, and any permit, right-of-way, or other action
25 taken to construct or complete the project pursuant to

1 Federal law, shall only be subject to judicial review on di-
2 rect appeal to the United States Court of Appeals for the
3 District of Columbia Circuit.

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