

112TH CONGRESS
2D SESSION

H. R. 4000

To approve the Keystone XL pipeline project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2012

Mr. MACK (for himself, Mr. REHBERG, Mr. BOREN, Mr. GRIFFIN of Arkansas, Mr. KISSELL, Ms. ROS-LEHTINEN, Mr. ROKITA, Mrs. McMORRIS RODGERS, Mr. SESSIONS, Mr. SCHOCK, Mr. LAMBORN, Mrs. NOEM, Mr. FLAKE, Mr. POE of Texas, Mr. RIVERA, Mr. BERG, Mr. DUNCAN of South Carolina, Mrs. LUMMIS, Mr. BISHOP of Utah, Mr. HERGER, Mrs. SCHMIDT, Mr. CHABOT, Mr. MANZULLO, Mr. KING of New York, Mrs. CAPITO, Mr. MCCLINTOCK, Mr. SAM JOHNSON of Texas, Mr. BURTON of Indiana, Mr. BROOKS, Mr. CARTER, Mr. WEST, Mr. COLE, Mr. BILIRAKIS, Mr. CANSECO, Ms. BUERKLE, Mrs. ELLMERS, Mr. BROUN of Georgia, Mr. DIAZ-BALART, Mr. CHAFFETZ, Mr. MILLER of Florida, Mr. LUCAS, Mr. LANDRY, Mr. ROYCE, Mr. CULBERSON, Mrs. BONO MACK, Mr. HUIZENGA of Michigan, Mr. DUNCAN of Tennessee, Mr. MCCAUL, Mr. BOUSTANY, Mrs. MILLER of Michigan, Mr. FARENTHOLD, Mr. RIGELL, and Mr. GIBBS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Energy and Commerce, Natural Resources, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To approve the Keystone XL pipeline project, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Energizing America
3 through Employment Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) On April 30, 2004, President George W.
7 Bush issued Executive Order 13337 (3 U.S.C. 301
8 note), delegating to the Department of State author-
9 ity to oversee the permitting process of cross-border
10 pipeline projects in an effort “to expedite reviews of
11 permits as necessary to accelerate the completion of
12 energy production and transmission projects”.

13 (2) On September 19, 2008, the Department of
14 State received an application for the Keystone XL
15 pipeline.

16 (3) On August 26, 2011, the Department of
17 State issued a final environmental impact statement
18 stating that the Keystone XL pipeline project posed
19 “no significant [environmental] impact”.

20 (4) Three years and four months after the Key-
21 stone XL application was submitted, due to objec-
22 tions to an imposed timeline, the Department of
23 State failed to uphold section 1(g) of Executive
24 Order 13337 requiring the Secretary of State to
25 make a national interest determination based on the
26 “views and assistance obtained” previously in rela-

1 tion to the merits of the permit requested by the ap-
2 plicant.

3 (5) Congress has the constitutional authority to
4 regulate commerce with foreign nations, and among
5 the several States, and with the Indian Tribes.

6 (6) The construction of the Keystone XL pipe-
7 line will result in job creation, increased energy secu-
8 rity, ancillary benefits, and multiplier effects for the
9 economy of the United States.

10 (7) The earliest possible completion of the Key-
11 stone XL pipeline project serves the national interest
12 of the United States.

13 **SEC. 3. APPROVAL OF KEYSTONE XL PIPELINE PROJECT.**

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

15 (1) IN GENERAL.—In accordance with section 8
16 of article 1 of the Constitution (delegating to Con-
17 gress the power to regulate commerce with foreign
18 nations), TransCanada Keystone Pipeline, L.P. is
19 authorized to construct, connect, operate, and main-
20 tain pipeline facilities, subject to subsection (c), for
21 the import of crude oil and other hydrocarbons at
22 the United States-Canada Border at Phillips Coun-
23 ty, Montana, in accordance with the application filed
24 with the Department of State on September 19,
25 2008 (as supplemented and amended).

1 (2) PERMIT.—Notwithstanding any other provi-
2 sion of law, no permit pursuant to Executive Order
3 13337 (3 U.S.C. 301 note) or any other similar Ex-
4 ecutive Order regulating construction, connection,
5 operation, or maintenance of facilities at the borders
6 of the United States, and no additional environ-
7 mental impact statement, shall be required for
8 TransCanada Keystone Pipeline, L.P. to construct,
9 connect, operate, and maintain the facilities de-
10 scribed in paragraph (1).

11 (b) CONSTRUCTION AND OPERATION OF KEYSTONE
12 XL PIPELINE IN UNITED STATES.—

13 (1) IN GENERAL.—The final environmental im-
14 pact statement issued by the Department of State
15 on August 26, 2011, shall be considered to satisfy
16 all requirements of the National Environmental Pol-
17 icy Act of 1969 (42 U.S.C. 4321 et seq.) and any
18 other provision of law that requires Federal agency
19 consultation or review with respect to the cross-bor-
20 der facilities described in subsection (a)(1) and the
21 related facilities in the United States described in
22 the application filed with the Department of State
23 on September 19, 2008 (as supplemented and
24 amended).

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

8 (c) CONDITIONS.—In constructing, connecting, oper-
9 ating, and maintaining the cross-border facilities described
10 in subsection (a)(1) and related facilities in the United
11 States described in the application filed with the Depart-
12 ment of State on September 19, 2008 (as supplemented
13 and amended), TransCanada Keystone Pipeline, L.P. shall
14 comply with the following conditions:

15 (1) TransCanada Keystone Pipeline, L.P. shall
16 comply with all applicable Federal and State laws
17 (including regulations) and all applicable industrial
18 codes regarding the construction, connection, oper-
19 ation, and maintenance of the facilities.

20 (2) Except as provided in subsection (a)(2),
21 TransCanada Keystone Pipeline, L.P. shall comply
22 with all requisite permits from Canadian authorities
23 and applicable Federal, State, and local government
24 agencies in the United States.

1 (3) TransCanada Keystone Pipeline, L.P. shall
2 take all appropriate measures to prevent or mitigate
3 any adverse environmental impact or disruption of
4 historic properties in connection with the construc-
5 tion, connection, operation, and maintenance of the
6 facilities.

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

9 (A) in all material respects, similar to that
10 described in—

11 (i) the application filed with the De-
12 partment of State on September 19, 2008
13 (as supplemented and amended); and

14 (ii) the final environmental impact
15 statement described in subsection (b)(1);
16 and

17 (B) carried out in accordance with—

18 (i) the construction, mitigation, and
19 reclamation measures agreed to for the
20 project in the construction mitigation and
21 reclamation plan contained in appendix B
22 of the final environmental impact state-
23 ment described in subsection (b)(1);

24 (ii) the special conditions agreed to
25 between the owners and operators of the

1 project and the Administrator of the Pipe-
2 line and Hazardous Materials Safety Ad-
3 ministration of the Department of Trans-
4 portation, as contained in appendix U of
5 the final environmental impact statement;

6 (iii) the measures identified in appen-
7 dix H of the final environmental impact
8 statement, if the modified route submitted
9 by the State of Nebraska to the Secretary
10 of State crosses the Sand Hills region; and

11 (iv) the stipulations identified in ap-
12 pendix S of the final environmental impact
13 statement.

14 (d) ROUTE IN NEBRASKA.—

15 (1) IN GENERAL.—Any route and construction,
16 mitigation, and reclamation measures for the project
17 in the State of Nebraska that is identified by the
18 State of Nebraska and submitted to the Secretary of
19 State under this section is considered sufficient for
20 the purposes of this section.

21 (2) PROHIBITION.—Construction of the facili-
22 ties in the United States described in the application
23 filed with the Department of State on September 19,
24 2008 (as supplemented and amended), shall not
25 commence in the State of Nebraska until the date

1 on which the Secretary of State receives a route for
2 the project in the State of Nebraska that is identi-
3 fied by the State of Nebraska.

4 (3) RECEIPT.—On the date of receipt of the
5 route described in paragraph (1) by the Secretary of
6 State, the route for the project within the State of
7 Nebraska under this section shall supersede the
8 route for the project in the State specified in the ap-
9 plication filed with the Department of State on Sep-
10 tember 19, 2008 (including supplements and amend-
11 ments).

12 (4) COOPERATION.—Not later than 30 days
13 after the date on which the State of Nebraska sub-
14 mits a request to the Secretary of State or any ap-
15 propriate Federal official, the Secretary of State or
16 Federal official shall provide assistance that is con-
17 sistent with the law of the State of Nebraska.

18 (e) ADMINISTRATION.—

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

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

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

9 (f) FEDERAL JUDICIAL REVIEW.—The cross-border
10 facilities described in subsection (a)(1), and the related fa-
11 cilities in the United States described in the application
12 filed with the Department of State on September 19, 2008
13 (as supplemented and amended), that are approved by this
14 section, and any permit, right-of-way, or other action
15 taken to construct or complete the project pursuant to
16 Federal law, shall only be subject to judicial review on di-
17 rect appeal to the United States Court of Appeals for the
18 District of Columbia Circuit.

19 **SEC. 4. REFERRAL OF APPLICATIONS FOR FUTURE CROSS-**
20 **BORDER PIPELINE FACILITIES AT THE**
21 **UNITED STATES BORDERS.**

22 (a) REFERRAL OF APPLICATION.—For purposes of
23 making a national interest determination under Executive
24 Order 13337 (3 U.S.C. 301 note) (or any successor Exec-
25 utive Order) with respect to any application filed with the

1 Department of State on or after the date of enactment
2 of this Act to construct, connect, operate, and maintain
3 pipeline facilities at the borders of the United States for
4 the import of crude oil and other hydrocarbons, the Sec-
5 retary of State shall, in addition to referring the applica-
6 tion to the departments and agencies described in section
7 1(b)(ii) of Executive Order 13337 (or any successor Exec-
8 utive Order), also refer the application and pertinent in-
9 formation to the committees of Congress specified in sub-
10 section (b) for purposes of requesting the views of such
11 committees of Congress.

12 (b) COMMITTEES OF CONGRESS.—The committees of
13 Congress referred to in subsection (a) are—

14 (1) the Committee on Foreign Relations, the
15 Committee on Commerce, Science, and Transpor-
16 tation, and the Committee on Energy and Natural
17 Resources of the Senate; and

18 (2) the Committee on Foreign Affairs, the
19 Committee on Transportation and Infrastructure,
20 the Committee on Energy and Commerce, and the
21 Committee on Natural Resources of the House of
22 Representatives.

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