112TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 112–703
Part 1

NORTH AMERICAN ENERGY ACCESS ACT

DECEMBER 17, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3548]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3548) to facilitate United States access to North American oil resources, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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29–006

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "North American Energy Access Act".

SEC. 2. RESTRICTION.

(a) IN GENERAL.—No person may construct, operate, or maintain the oil pipeline and related facilities described in subsection (b) except in accordance with a permit issued under this Act.

(b) PIPELINE.—The pipeline and related facilities referred to in subsection (a) are those described in the Final Environmental Impact Statement for the Keystone XL Pipeline Project issued by the Department of State on August 26, 2011, including any modified version of that pipeline and related facilities.

SEC. 3. PERMIT.

(a) ISSUANCE.—

(1) BY FERC.—The Federal Energy Regulatory Commission shall, not later than 30 days after receipt of an application therefor, issue a permit without additional conditions for the construction, operation, and maintenance of the oil pipeline and related facilities described in section 2(b), to be implemented in accordance with the terms of the Final Environmental Impact Statement described in section 2(b). The Commission shall not be required to prepare a Record of Decision under section 1505.2 of title 40 of the Code of Federal Regulations with respect to issuance of the permit provided for in this section.

(2) ISSUANCE IN ABSENCE OF FERC ACTION.—If the Federal Energy Regulatory Commission has not acted on an application for a permit described in paragraph (1) within 30 days after receiving such application, the permit shall be deemed to have been issued under this Act upon the expiration of such 30-day period.

(b) MODIFICATION.—

(1) IN GENERAL.—The applicant for or holder of a permit described in subsection (a) may make a substantial modification to the pipeline route or any other term of the Final Environmental Impact Statement described in section 2(b) only with the approval of the Federal Energy Regulatory Commission. The Commission shall expedite consideration of any such modification proposal.

(2) NEBRASKA MODIFICATION.—Within 30 days after the date of enactment of this Act, the Federal Energy Regulatory Commission shall enter into a memorandum of understanding with the State of Nebraska for an effective and timely review under the National Environmental Policy Act of 1969 of any modification to the proposed pipeline route in Nebraska as proposed by the applicant for the permit described in subsection (a). Not later than 30 days after receiving approval of such proposed modification from the Governor of Nebraska, the Commission shall complete consideration of and approve such modification.

(3) ISSUANCE IN ABSENCE OF FERC ACTION.—If the Federal Energy Regulatory Commission has not acted on an application for approval of a modification described in paragraph (2) within 30 days after receiving such application, such modification shall be deemed to have been issued under this Act upon expiration of the 30-day period.

(4) CONSTRUCTION DURING CONSIDERATION OF NEBRASKA MODIFICATION.—While any modification of the proposed pipeline route in Nebraska is under consideration pursuant to paragraph (2), the holder of the permit issued under subsection (a) may commence or continue with construction of any portion of the pipeline and related facilities described in section 2(b) that is not within the State of Nebraska.

SEC. 4. RELATION TO OTHER LAW.

(a) GENERAL RULE.—Notwithstanding Executive Order 13337 (3 U.S.C. 301 note), Executive Order 11423 (3 U.S.C. 301 note), section 301 of title 3, United States Code, and any other Executive Order or provision of law, no presidential permits shall be required for the construction, operation, and maintenance of the pipeline and related facilities described in section 2(b) of this Act.

(b) APPLICABILITY.—Nothing in this Act shall affect the application to the pipeline and related facilities described in section 2(b) of—

(1) chapter 601 of title 49, United States Code; or

(2) the authority of the Federal Energy Regulatory Commission to regulate oil pipeline rates and services.

PURPOSE AND SUMMARY

H.R. 3548, the "North American Energy Access Act," was introduced by Rep. Lee Terry (together with several other representatives) on December 2, 2011. The legislation requires the U.S. Federal Energy Regulatory Commission to issue, within 30 days, a permit for the Keystone XL pipeline project in accordance with the terms of the August 26, 2011 Final Environmental Impact Statement from the Department of State.

BACKGROUND AND NEED FOR LEGISLATION

Energy is often found far from where it is needed, and North American crude oil is no exception. A Canadian pipeline company, TransCanada, has long sought to increase the capacity of its Keystone pipeline system in order to bring more oil from Alberta to American refineries in the Midwest and Gulf Coast. A permit application for its proposed 1,700 mile expansion project, Keystone XL, was submitted to the U.S. Department of State (DOS) in September 2008.

In the more than four years since—an unusually long period for such permits—the Nation has faced consistently high gasoline prices, stubbornly-high unemployment rates, and continued risks of relying on oil from the Middle East. Approval of Keystone XL would help address all of these concerns, but the Obama Administration denied approval for the pipeline in January 2012. The Administration's latest announcement delaying a decision on a resubmitted application for Keystone XL until 2013 raises serious questions about its commitment to the project. In addition, a point may be reached soon where continued inaction will force the Canadian government to pursue other markets for its oil, at which time the benefits to the American people of Keystone XL would be lost.

Additional Canadian oil would benefit America in many ways. Meeting the Nation's demand for petroleum and motor fuels remains a challenge. However, domestic oil production growth is limited by the Federal government. Many promising domestic onshore and offshore areas are explicitly off-limits to energy leasing, and even those that are not, may be subject to permitting delays or regulatory constraints that effectively make them so. Oil imports are needed to fill the gap between consumption and domestic production.

Unfortunately, many nations that serve as a source of these imports continue to display substantial instability as well as anti-American hostility. This raises concerns about the risks—both economic and otherwise—of continued reliance upon such nations. Further, declining production from Venezuela and Mexico, both important sources of supply for the large concentration of refineries located along the Gulf Coast, are leading to shortfalls that will need to be made up through oil supplies from elsewhere.

For these reasons, Canadian oil is critical to America's energy future. In addition to being a very stable country, a strong ally, and our largest trading partner, Canada is America's single largest source of oil imports. Canadian output is on the rise, especially oil sands production from the province of Alberta. The untapped potential is vast—Alberta is second only to Saudi Arabia in proven reserves with an estimated 175 billion barrels of recoverable oil.

Canada currently produces more than enough oil for its own needs and sends most of the rest south, via pipelines, to American refineries.

Thus, Alberta oil sands production represents a nearly ideal source of supply for the American market that will increase in the years ahead. And pipelines are the safest means of transporting that oil. However, the existing pipeline system between the two nations is unable to keep up with the growing volumes (and especially the capacity from Canada to the Gulf Coast), necessitating the need for a major expansion project such as Keystone XL.

Once completed, the Keystone XL project would add at least 700,000 barrels per day to the 591,000 barrels per day capacity of the existing pipeline, more than enough to substantially reduce imports from the Middle East, as well as make a difference in the price at the pump. And it can do so for the long term, as the output from Alberta is expected to provide this additional oil for decades to come. The pipeline also would furnish a safe and efficient means of transporting the growing domestic supplies of oil from the Bakken formation in North Dakota and Montana to refineries in the Midwest and Gulf Coast.

In addition to the energy benefits, the construction phase of Keystone XL would create thousands of American jobs. The completed pipeline will sustain many permanent jobs, including those associated with refining the oil into gasoline and other products. Alleviating potential bottlenecks in the Bakken formation also will facilitate continued oil-industry job growth there.

The substantial benefits of Keystone XL would come at no cost to the American taxpayer; TransCanada will pay the project's estimated $7 billion. In fact, over the lifetime of the project, billions in revenue will be created in local, State and Federal taxes.

Keystone XL Permitting Timeline

Ordinarily, the U.S. government does not have permit authority for oil pipelines, even interstate pipelines. Generally, the primary siting authority for oil pipelines would be established under applicable State law. However, the construction, connection, operation, and maintenance of a pipeline that connects the United States with a foreign country historically has required executive permission conveyed through a Presidential Permit. Executive Order 13337 delegates the President's authority to receive applications for Presidential Permits to the Secretary of State.

TransCanada submitted an application for a Presidential Permit with DOS in September 2008. In November 2008, TransCanada submitted a comprehensive environmental report to DOS, thereby initiating the National Environmental Policy Act (NEPA) review process.

On January 28, 2009, DOS issued its Notice of Intent to Prepare an Environmental Impact Statement (EIS), which commenced a public scoping period to identify significant environmental issues. Among other things, this included public meetings held in more than twenty impacted communities. On April 16, DOS issued a Draft Environmental Impact Statement (DEIS) and extended the public comment period to 77 days.

On July 2, 2010, DOS closed the comment period on the DEIS. The Environmental Protection Agency (EPA) determined that the

DEIS was inadequate, requiring DOS to perform additional review in a Supplemental Draft Environmental Impact Statement (SDEIS). The SDEIS was issued on April 29, 2011, and initiated an additional 45-day comment period. DOS ultimately concluded that "the information in this SDEIS does not alter the conclusions reached in the [DEIS] regarding the need for and the potential impacts of the proposed Project."

On June 6, 2011, EPA again informed DOS that the SDEIS contains insufficient information and requested additional analysis be performed for the Final Environmental Impact Statement (FEIS).

The FEIS was issued by DOS on August 26, 2011. It compiles three years of work by fourteen Federal and State bureaus and agencies. Its issuance commenced a 30-day public comment period and a 90-day multi-agency comment period on the National Interest Determination.

Since the President denied approval for the first Keystone XL application on January 18, 2012, the process has essentially begun anew. On May 4, 2012, TransCanada resubmitted an application for a Presidential Permit for a revised Keystone XL pipeline route with the Department of State. On June 15, 2012, the Department of State filed a notice of intent in the Federal Register to prepare a Supplemental Environmental Impact Statement (SEIS) to the August 2011 EIS on Keystone XL. The work on the SEIS continues to be ongoing.

The ongoing permitting process for Keystone XL has taken over 50 months thus far, and has included multiple opportunities for input from every affected level of government as well as the public. By comparison, the original Keystone pipeline project was permitted in less than 24 months.

Keystone XL Legislative Timeline

In order to address the Administration's delays in approving this project, Rep. Lee Terry (R–NE) introduced H.R. 1938, the "North American-Made Energy Security Act of 2011," on May 23, 2011. This bill would have required the President to make a final decision on Keystone XL by November 1, 2011.

On May 23, 2011, the Subcommittee on Energy and Power held a hearing on H.R. 1938. On June 15, 2011, the Subcommittee favorably reported the bill to the full Committee on Energy and Commerce. On June 23, 2011, the full Committee on Energy and Commerce favorably reported H.R. 1938 to the House. On July 27, 2011, it passed the House by a vote of 279–147.

However, on July 25, 2011, the President issued a Statement of Administration Policy in opposition to the bill. The Administration did not reject Keystone XL explicitly, but asserted that imposing a statutory deadline of November 1, 2011 "is unnecessary because the Department of State has been working diligently to complete the permit decision process for the Keystone XL pipeline and has publicly committed to reaching a decision before December 31, 2011."

On November 10, 2011, the White House reversed position and announced that DOS will need additional time beyond 2011 to make a decision on Keystone XL, suggesting a target date of 2013 at the earliest. The ostensible reason for the delay was a dispute in Nebraska over a portion of the pipeline's route through that

State. That dispute is currently being resolved by the State government of Nebraska.

The Nebraska State legislature and Governor have made clear that it was never their intention for a relatively minor route change to become a rationale for lengthy Federal delays or to jeopardize the entire 1,700 mile project. On November 15, 2011, Governor Dave Heineman stated that "Nebraskans have been clear about our position on the pipeline—we support it."

On December 23, 2011, Congress passed and the President signed H.R. 3765, the "Temporary Payroll Tax Cut Continuation Act." It included provisions requiring the President to approve Keystone XL within 60 days unless he determines that doing so is not in the national interest. On January 18, 2012, well before the 60-day period had run, the President rejected the pipeline, claiming that more time is needed for DOS to review it. Though this rejection was purportedly for Nebraska's benefit, Governor Heineman responded that "I am very disappointed with the actions of President Obama and his decision to deny a jobs-creating pipeline," and the Governor asserted that the President "should be focused on putting Americans back to work, and could have done so by issuing conditional approval of the pipeline."

It should be noted that the intra-state concerns in Nebraska are completely unrelated to the reason for Federal involvement in Keystone XL—the fact that the pipeline would cross the border from Canada into the U.S.

Notwithstanding H.R. 3765, Mr. Terry introduced H.R. 3548, the "North American Energy Access Act," on December 2, 2011. This bill would require FERC to issue a permit for the Keystone XL project in accordance with the terms of the FEIS. If FERC does not do so within 30 days, the project is deemed to be approved. The bill also requires that FERC incorporate, in a timely fashion, any proposed route modifications or other changes approved by the Governor of Nebraska.

H.R. 3548 does not alter or short circuit the environmental reviews and other requirements necessary for Keystone XL to obtain its Federal permit. Indeed, the project has been studied extensively and all legitimate concerns have been raised and addressed in the FEIS. H.R. 3548 simply requires the FERC to approve the project based on the FEIS.

The Energy Benefits of Keystone XL

Once completed, the Keystone XL project would add another 700,000 barrels per day of pipeline capacity to the system's existing 591,000 barrels per day, bringing this oil to refineries in the Midwest and Gulf Coast. Subsequent upgrades could boost additional throughput to over 800,000 barrels per day. In addition to the Canadian oil, the pipeline also could carry up to 100,000 barrels per day of American oil from the Bakken formation.

According to an assessment of Keystone XL conducted for the Department of Energy and included in the SDEIS (DOE KXL Report), the project holds "the potential to very substantially reduce U.S. dependency on non-Canadian foreign oil, including from the Middle East."

Rapidly-growing production from Alberta's oil sands is the reason the pipeline expansion is needed. America currently imports approximately 2 million barrels per day (mbd) from Canada, of which 1.1 mbd is from oil sands. However, oil sands production is relatively new, and its potential has only begun to be realized. According to testimony at the May 23, 2011 hearing from James Burkhard, Managing Director of IHS CERA, "the oil sands make Canada one of the very few countries in the world that could substantially increase oil production for the next several decades." He added that "over the past decade production growth picked up rapidly and supply more than doubled to about 1.5 mbd in 2010. This is greater than the 1.2 mbd that Libya exported to the global market in 2010, before the civil war."

Oil sands production is expected to continue its rapid growth. Murray Smith, former member of the Legislative Assembly of Alberta and Minister of Energy, testified that "Alberta's production is expected to increase to over 3 million barrels a day by the end of the decade." In other words, Canada has more than enough oil to dramatically increase exports to the United States and maintain them for the foreseeable future. The only limiting factor is pipeline capacity.

By way of comparison, in June 2011, President Obama responded to the Libya-induced price spike by authorizing the release of 30 million barrels of oil from the Strategic Petroleum Reserve (SPR) for a period of 30 days—an additional million barrels per day. Keystone XL has the potential to add 80 percent as much oil per day as this SPR release, but with two critical differences. First, the SPR is not a source of newly-produced oil, but a stockpile previously set aside for emergency use. The oil coming from Canada via Keystone XL would represent a genuine addition to the Nation's supply. More importantly, while the SPR stockpile is available for a short time span and then would need to be replenished, Keystone XL could supply oil every day for several decades—truly part of the long-term solution to the Nation's demand for all of its petroleum needs.

These benefits would largely be lost if Keystone XL is not built. Although some of Canada's growing oil production could reach the U.S. through other pipelines, as well as alternatives like rail transport, most of it would bypass the country without Keystone XL. The Canadian government has stated that continued delays would leave them little choice but to increase pipeline capacity west to Pacific ports for transport by tanker to China and other Asian markets. Indeed, Canadian Prime Minister Steven Harper expressed "profound disappointment" with the President's January 18, 2012 decision not to approve Keystone XL, and said that Canada "will continue to work to diversify its energy exports." Subsequently, the Prime Minister has visited China, and among the agenda items was a Canadian proposal to build an oil pipeline from Alberta to the Pacific Coast.

The loss of Canadian oil to Asia would damage the Nation's energy security. The KXL DOE Report finds that the choice for Canadian exporters "is between moving increasing crude oil volumes to the USA or to Asia," and that if these "crudes move to Asia instead of the U.S., the 'gap' would be filled by offsetting increases in crude oil imports from other foreign sources, especially the Middle East (as the primary balancing supplier)." Similarly, the FEIS concludes that if the pipeline is not built, Gulf Coast refineries "would be forced to rely on oil shipped by barge or tanker from areas outside of North America from regions which are experiencing declining production or are not secure and reliable sources of crude oil."

Unlike Canadian oil flowing through a pipeline to the Pacific Coast and on to tankers headed for Asia, virtually all of the oil flowing through Keystone XL would go to American refineries. DOE Deputy Assistant Secretary for Policy Analysis Carmine Defiglio concluded in a June 22, 2011 Memorandum to DOS that the export of Keystone XL oil from American ports would be "unlikely." Further, while most of the products refined from Canadian oil sent to Asia would stay in Asia, most of the gasoline and other fuels made from Keystone XL oil would serve the American market.

The Economic Benefits of Keystone XL

In addition to the benefits of a secure supply of oil from a strong ally, approval of Keystone XL also is projected to create a substantial number of jobs. Stephen Kelly, Assistant General President of the United Association of Plumbers and Pipe Fitters, testified in favor of H.R. 1938 at the May 23, 2011 hearing. According to estimates cited by Kelly, the project is "expected to create approximately 13,000 high-quality, good-paying construction jobs." Kelly testified that the wages and benefits for these jobs would be approximately $50 per hour.

The benefits will go well beyond the direct jobs building the pipeline. For example, most of the construction equipment, pipe, and other supplies used to build Keystone XL would be U.S.-sourced, as well as much of the technical expertise associated with the project. Kelly testified that the indirect jobs "include 7,000 manufacturing jobs associated with the production of materials and components for the pipeline, and over 118,000 spin-off jobs in various sectors related to the design, construction and operation of the pipeline."

The strong labor union support for Keystone XL was reaffirmed at the December 2, 2011, hearing on H.R. 3548 before the Subcommittee on Energy and Power. Representatives of the Laborers' International Union of North America, the International Union of Operating Engineers, the United Association of Plumbers and Pipe Fitters, and the International Brotherhood of Electrical Workers all testified in support of H.R. 3548. For example, Brent Booker, Director of the Construction Department at the Laborers' International Union of North America, stated that "Keystone XL will create good-paying jobs here in the United States and Canada and will increase the nation's energy security by providing a reliable source of crude oil from a friendly and stable trading partner. And it will provide state and local governments with new revenue that can help them provide the needed services to the public." These four union witnesses estimated that Keystone XL would create, respectively, 3 million, 3 million, 2.5 to 3 million, and 64,000 worker-hours for their members—and they are not the only unions that would be involved in the project.

Even after the construction phase is complete, Keystone XL would provide employment associated with its operation. Along with Canadian oil, the pipeline also would alleviate potential oil bottlenecks that might otherwise limit growing oil production in North Dakota and Montana, ensuring continued job growth there.

In addition, Canadian oil can take the place of declining Mexican and Venezuelan supplies reaching Gulf Coast refineries, helping to maintain or expand jobs at those facilities. Further, given the well-established inverse relationship between energy costs and employment, the reduction in oil and gasoline prices as a consequence of Keystone XL would yield additional jobs throughout the economy.

Ironically, during the span in which the Keystone XL permit has languished at DOS, the Obama Administration and Congress enacted and implemented a $787 billion stimulus package in an attempt to reduce unemployment and jump-start the economy. Keystone XL would have been a prime example of the "shovel-ready" projects that proponents of the stimulus package had hoped to initiate—one that creates a large number of well-paying jobs and boosts economic activity. Furthermore, while the stimulus package cost taxpayers a great deal of money (and whether it actually created an appreciable number of jobs is a matter of considerable debate), the $7 billion Keystone XL project would be financed privately. In fact, rather than require tax dollars, Keystone XL would generate substantial tax revenues for State and local communities along its route as well as the Federal government—an estimated $138.4 million in annual property tax revenues alone.

It is worth noting the stark contrast between Keystone XL and the growing number of Federally-funded failures like solar-panel maker Solyndra, the first recipient of stimulus money to go bankrupt. The former has the potential to create thousands of jobs while adding to the Nation's energy supply and generating government revenues, while the latter is currently providing no jobs and no energy, but is costing taxpayers more than half a billion dollars.

The Environmental Benefits of Keystone XL

The FEIS makes a strong environmental case for building Keystone XL. Indeed, it finds that every alternative to this project carries relatively higher environmental risks.

Throughout the lengthy permitting process, any and all environmental and safety concerns have been addressed. The FEIS noted that DOS worked with the Pipeline and Hazardous Materials Safety Administration (PHMSA) to require 57 project-specific special conditions. As a result, "DOS determined that incorporation of the Special Conditions would result in a Project that would have a degree of safety greater than any typically constructed domestic oil pipeline system under current regulations and a degree of safety along the entire length of the pipeline system that would be similar to that required in high consequence areas as defined in the regulations." In effect, the FEIS is requiring Keystone XL to be the safest oil pipeline in existence. At the December 2, 2011 hearing, David Barnett, Special Representative of the United Association of Plumbers and Pipe Fitters, criticized the irrational preoccupation with the risks from Keystone XL. He stated that "there are thousands of miles of 50 and 100-year old oil and gas pipelines that are well beyond their useful life," but that "in focusing attention on Keystone XL, we have zeroed in on the model pipeline rather than the problem pipelines."

Nonetheless, the FEIS concedes that Keystone XL carries some risks, but concludes that it is "preferred alternative" to any other option. In fact, it states that "DOS does not regard the No Action

Alternative [not building the pipeline] to be preferable to the proposed Project."

The Keystone XL pipeline represents the shortest path between North America's largest source of new oil supplies (Alberta) and North America's largest demand center for that oil (the refineries of the Gulf Coast). Further, pipelines are the safest mode of oil transport, as compared to tanker, barge, train, or truck. Without the Keystone XL pipeline linking Canadian production with American refining, Alberta's growing oil supplies will travel longer distances over less safe means to reach Asia, while Middle Eastern and other oil supplies will do the same to reach the Gulf Coast. As discussed previously, this would be counterproductive from an energy security standpoint, but it would also be counterproductive from an environmental standpoint. Beyond the risk of spills, the FEIS notes that "transport of crude oil by tanker rather than by pipeline would likely result in greater transportation-related GHG emissions."

Moreover, claims of environmental damage attributable to production of the oil sands in Alberta—including assertions of substantially higher greenhouse gas emissions relative to conventional oil—are particularly misplaced in the context of the U.S. approval process for Keystone XL. For example, the on-site impacts and emissions are the responsibility of the Alberta government, and there is no need for a redundant consideration of these matters. At a May 23, 2011 hearing before the Subcommittee on Energy and Power, Dan McFayden, Chairman of the Energy Resources Conservation Board of Alberta, testified to the rigor and thoroughness of its approval process and the many safeguards that have been put in place; "Every oil sands project is subjected to regulatory scrutiny throughout its life cycle, from authorization and operational compliance to end-of-life closure," he said.

More importantly, the Canadian and Alberta provincial governments have made clear that they will allow oil sands production to increase regardless of Keystone XL's fate. Thus, approval or disapproval of the project ultimately makes no difference regarding the environmental impacts and emissions associated with the production of Albertan oil sands.

These conclusions are further supported by the DOE KXL Report, which includes an assessment of global life-cycle GHG impacts of scenarios evaluated in this study. That study concluded "no significant change . . . in global refinery CO2 and total lifecycle GHG emissions whether KXL is built or not." Changes in lifecycle emissions were calculated with models and methodology used in deriving indirect impacts of petroleum consumption for the EPA's renewable fuels standard program.

The Trans-Alaska Pipeline Precedent

There are many parallels between Keystone XL and the debate over the Trans-Alaska Pipeline in the early 1970s. Back then, a major discovery of oil in the North Slope of Alaska at Prudhoe Bay—the largest on the continent prior to development of the Alberta oil sands—necessitated a pipeline to bring this oil to southern Alaska for transport to West Coast refineries. A consortium of energy companies proposed to build the 800-mile Trans-Alaska Pipeline.

The project was thoroughly studied for several years during which all legitimate environmental and safety concerns were addressed. Nonetheless, Federal approval became bogged down by NEPA-related delays similar to those currently impeding Keystone XL.

However, Middle-East turmoil and rising oil prices finally sparked Congressional action. In 1973, Congress passed and President Nixon signed the Trans-Alaska Pipeline Authorization Act, which removed all Federal roadblocks to the project and deemed it approved. The statute's purpose was "to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the trans-Alaska oil pipeline be constructed promptly without further administrative or judicial delay or impediment."

Construction on the Trans-Alaska Pipeline began in 1974. Despite numerous engineering challenges associated with Alaska's extreme temperatures and rugged terrain, the pipeline was completed on time in 1977. It has been in operation ever since.

To date, the pipeline has delivered over 16 billion barrels of oil to the American market, considerably more than a number of the project's critics had predicted. It has contributed substantially to the health of Alaska's economy while creating jobs across the country and strengthening national security. And, notwithstanding the many dire predictions at the time from anti-pipeline activist groups (several of whom now oppose Keystone XL), the pipeline has amassed an excellent environmental and safety record, and it did so using technology far less sophisticated than what is required in the FEIS for Keystone XL. Most consider the pipeline to be a great success—indeed, many see it as a source of national pride as well as oil.

The Trans-Alaska Pipeline Authorization Act was an acknowledgement by Congress that the environmental review process it created had gotten out of hand, and that a project clearly in the national interest was being jeopardized. With that bill, Congress took back control of the process and put an end to the unnecessary delays. As a result, an important pipeline project at risk of being stopped by red tape was allowed to proceed. The North American Energy Access Act seeks to accomplish much the same thing.

HEARINGS

On December 2, 2011, the Subcommittee on Energy and Power held a legislative hearing on the "North American Energy Access Act," and received testimony from:

- Mr. Brent Booker, Director, Construction Department, Laborers' International Union of North America;
- Mr. Jeffrey Soth, Assistant Director, Department of Legislative and Political Affairs, International Union of Operating Engineers;
- Mr. David Barnett, Special Representative, Pipe Line Division, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada;
- Mr. Bruce Burton, International Representative, International Brotherhood of Electrical Workers;

- Mr. Jerome Ringo, Chief Business Officer, BARD Holdings Inc.; and,
- Ms. Jane Kleeb, Executive Director, Bold Nebraska.

A second legislative hearing was held on January 25, 2012, and testimony was received from:

- The Honorable Kerri-Ann Jones, Assistant Secretary of State, Bureau of Oceans and International Environmental and Scientific Affairs; and
- Mr. Jeffrey C. Wright, Director, Office of Energy Projects, Federal Energy Regulatory Commission.

A third legislative hearing was held on February 3, 2012, and testimony was received from:

- Ms. Margaret Gaffney-Smith, Chief—Regulatory Programs, U.S. Army Corps of Engineers;
- Mr. Mike Pool, Deputy Director, Bureau of Land Management;
- Mr. Steven M. Anderson, Brigadier General (Retired), U.S. Army; and,
- Mr. Randall F. Thompson, Nebraska rancher.

COMMITTEE CONSIDERATION

On December 2, 2011, H.R. 3548, the "North American Energy Access Act," was introduced.

On December 2, 2011, January 25, 2012, and February 3, 2012, the Subcommittee on Energy and Power held legislative hearings on H.R. 3548.

On February 6 and 7, 2012, the full Committee on Energy and Commerce met in open markup session. During the markup, 6 amendments were offered, of which 1 was adopted, and the Committee ordered H.R. 3548 favorably reported to the House.

COMMITTEE VOTES

Clause 3(b) of rule XII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 3548, reported to the House, as amended, was agreed to by a record vote of 33 yeas and 20 nays. The following reflects the recorded votes taken during the Committee consideration, including the names of those Members voting for and against.

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 81

BILL: H.R. 3548, the "North American Energy Access Act"

AMENDMENT: An amendment offered by Mr. Markey, No. 1b, to prohibit the export of oil and refined products that originate from the Keystone XL pipeline. A waiver for this requirement may be issued by the President if it can be determined such exports will not lead to increased imports from hostile countries, higher fuel prices, or the violation of current laws and trade agreements.

DISPOSITION: **NOT AGREED TO,** by a roll call vote of 14 yeas and 37 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton				Mr. Dingell		X	
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green		X	
Mr. Rogers		X		Ms. DeGette		X	
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle		X	
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez		X	
Mrs. Blackburn				Mr. Inslee		X	
Mr. Bilbray		X		Ms. Baldwin			
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

02/07/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 82

BILL: H.R. 3548, the "North American Energy Access Act"

AMENDMENT: An amendment offered by Mr. Dingell, No. 1c, requires that the authorization of, and permits for, the Keystone XL pipeline shall be carried out pursuant to the procedures established under Executive Order 13337.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas and 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin			
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

02/07/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 83

BILL: H.R. 3548, the "North American Energy Access Act"

AMENDMENT: An amendment offered by Ms. Eshoo, No. 1d, prohibiting the issuance of a permit to construct the Keystone XL pipeline until the Pipeline and Hazardous Materials Safety Administration issues a report on hazardous liquid pipeline regulations pursuant to P.L. 112-90.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 19 yeas and 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin			
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

02/07/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 84

BILL: H.R. 3548, the "North American Energy Access Act"

AMENDMENT: An amendment offered by Mr. Doyle, No. 1e, prohibiting the issuance of a permit to construct the Keystone XL pipeline until the permit applicant certifies that 75 percent of the steel and iron used to construct the Keystone XL pipeline is produced in North America.

DISPOSITION: NOT AGREED TO, by a roll call vote of 19 yeas and 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman			
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin			
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

02/07/2012

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 85

BILL: H.R. 3548, the "North American Energy Access Act"

AMENDMENT: A motion by Mr. Upton to order H.R. 3548 favorably reported to the House, as amended. (Final Passage)

DISPOSITION: AGREED TO, as amended, by a roll call vote of 33 yeas and 20 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey		X	
Mr. Whitfield	X			Mr. Towns		X	
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green		X	
Mr. Rogers	X			Ms. DeGette		X	
Mrs. Myrick	X			Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez		X	
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray	X			Ms. Baldwin			
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey	X			Mr. Matheson	X		
Mr. Scalise	X			Mr. Butterfield		X	
Mr. Latta	X			Mr. Barrow	X		
Mrs. McMorris Rodgers	X			Ms. Matsui		X	
Mr. Harper	X			Mrs. Christensen		X	
Mr. Lance	X			Ms. Castor		X	
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

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COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 3548 facilitates United States access to North American oil resources.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3548, the "North American Energy Access Act," would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 3548, the North American-Made Energy Security Act, contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 3548—North American Energy Access Act

H.R. 3548 would establish procedures and requirements related to issuing federal permits for the proposed Keystone XL pipeline, which would be constructed by a private company to carry crude oil from Alberta, Canada, to destinations on the U.S. Gulf Coast. Under current law, the proposed pipeline requires a Presidential permit because it would cross international borders. The Department of State is responsible for issuing such permits.

H.R. 3548 would modify current law to exempt the sponsors of the Keystone XL pipeline from the requirement to obtain a Presidential permit for that project and would specify procedures for the Federal Energy Regulatory Commission (FERC) to issue necessary permits. Under the bill, FERC would have 30 days to review an application for a permit to construct, operate, and maintain the proposed pipeline; if FERC did not act on the application within that time, the permit would be deemed to have been issued. In addition, the bill would specify procedures related to federal reviews of any future applications to modify the route of the proposed pipeline and accompanying environmental reviews required under the National Environmental Policy Act.

CBO estimates that enacting H.R. 3548 would have no significant impact on the federal budget. Based on information from affected agencies, CBO estimates that the bill would not significantly affect spending for regulatory activities related to the proposed Keystone XL pipeline, which would be subject to appropriation. Further, because FERC recovers 100 percent of its costs through user fees, any change in its administrative costs would be offset by an equal change in fees that the commission charges. Enacting H.R. 3548 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3548 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1: This section provides the short title for the legislation, the “North American Energy Access Act.”

Section 2: This section provides that no person may construct, operate, or maintain the oil pipeline described in the Final Environmental Impact Statement (FEIS) issued by the State Department on August 26, 2011, except with a permit issued under the Act.

Section 3—Issuance of Permit: Subsection 3(a) provides that Federal Energy Regulatory Commission (FERC) is required to issue a permit for the construction of the pipeline if the application is for the pipeline described in the FEIS. FERC is required to issue a permit for the pipeline within 30 days of receiving an application. If FERC fails to act on the application within 30 days of receipt, the permit shall be deemed issued upon expiration of the 30 days.

Modifications Generally: Subsection 3(b) provides that the applicant may make a substantial modification to the pipeline only with the approval of FERC.

Nebraska Modification: Subsection 3(c) provides that FERC must enter into a memorandum of understanding with the State of Nebraska to complete a review, pursuant to the National Environmental Policy Act of 1969, of any modification to the proposed pipeline route in Nebraska. FERC is required to approve the modification within 30 days after receiving approval of the proposed modification from the Governor of Nebraska. The modification shall be deemed approved if FERC fails to act within 30 days of receiving the application for modification.

Section 4: This section provides that a no presidential permit shall be required to construct pipeline, and that the pipeline remains subject to pipeline safety standards and FERC rate regulation, as applicable.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

DISSENTING VIEWS

BACKGROUND

Keystone XL is a highly controversial $7 billion pipeline that would transport up to 830,000 barrels per day (bpd) of tar sands crude oil almost 2,000 miles from Alberta, Canada to refineries in the Gulf Coast.[1] Under existing law, transboundary pipeline projects require Presidential approval to proceed. The President has delegated the authority to permit transboundary pipeline projects to the State Department under Executive Orders 11423 and 13337, which require a finding that a project is in the national interest.[2] Pursuant to the National Environmental Policy Act, in considering a project, the State Department must prepare an environmental impact statement (EIS) assessing the project's impacts on the environment and evaluating alternatives that would avoid or minimize adverse environmental effects.[3] E.O. 13337 recognizes that these complex decisions involve matters within the expertise of multiple federal agencies, and it provides specified federal agencies 90 days to comment on the application.[4]

The Department of State published a draft EIS on April 16, 2010, for public comment. Pursuant to NEPA, EPA, DOE, and other federal agencies commented on the draft EIS, and there were also extensive public comments. EPA reviewed the adequacy of the draft EIS and rated the draft as "Category 3—Inadequate Information," which is the lowest rating possible.[5] In response, the State Department published a supplemental draft EIS (SDEIS) on April 22, 2011, providing additional information and analysis on various aspects of the project.[6] The comment period ended on June 6, 2011.

Subsequently, on August 26, 2011, the State Department issued a final EIS.[7] At that time, the State Department planned on a 90-day review period in which it would consult with other federal agencies to determine if issuing a permit for the project is in the

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[1] TransCanada Keystone Pipeline, L.P., *Application of TransCanada Keystone Pipeline, L.P. for a Presidential Permit Authorizing the Construction, Operation, and Maintenance of Pipeline Facilities for the Importation of Crude Oil to be Located at the United-States-Canada Border,* 7–9 (Sept. 19, 2008); U.S. Department of State, *Supplemental Draft Environmental Impact Statement, Keystone XL Project, Applicant for Presidential Permit: TransCanada Keystone Pipeline, LP,* 1–5 (Apr. 22, 2011).

[2] Exec. Order No. 11423, 33 Fed. Reg. 11741 (Aug. 16, 1968); Exec. Order No. 13337, 69 Fed. Reg. 25299 (Apr. 30, 2004).

[3] National Environmental Policy Act of 1969, Pub. L. No. 94–83.

[4] Exec. Order No. 13337, § 1(c), 69 Fed. Reg. 25299 (Apr. 30, 2004).

[5] Letter from Cynthia Giles, Assistant Administrator for Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, to Jose W. Fernandez, Assistant Secretary, Economic, Energy and Business Affairs, U.S. Department of State and Dr. Kerri-Ann Jones, Assistant Secretary, Oceans and International Environmental and Scientific Affairs, U.S. Department of State (Jul. 16, 2010).

[6] U.S. Department of State, *Notice of Availability of the Draft Environmental Impact Statement for the Proposed TransCanada Keystone XL Pipeline Project,* 75 Fed. Reg. 20653 (Apr. 16, 2010); U.S. Department of State, *Notice of Availability of the Supplemental Draft Environmental Impact Statement for the Proposed TransCanada Keystone XL Pipeline Project,* 76 Fed. Reg. 22744 (Apr. 22, 2011).

[7] U.S. Department of State, *Final Environmental Impact Statement Fact Sheet* (Aug. 26, 2011); U.S. Department of State, *Final Environmental Impact Statement for the Proposed Keystone XL Project; Public Meetings,* 76 Fed. Reg. 53525 (Aug. 26, 2011); U.S. Department of State, *Notice of Availability of the Final Environmental Impact Statement for the Proposed Keystone XL Project,* 76 Fed. Reg. 55155 (Sept. 6, 2011).

national interest.[8] The public was also invited to submit comments on the national interest determination during the first 30 days of that period.[9]

However, there were widespread public concerns about the pipeline and the adequacy of the review process. In particular, the State Department received numerous comments on the final EIS regarding the unique and sensitive nature of the Sand Hills, including its wetlands, ecosystem, and shallow groundwater, and the Nebraska legislature had convened a special session to consider these issues.[10] Given the increased concern regarding the proposed route's potential environmental impacts on the Sand Hills, the State Department determined that additional information was needed to make a National Interest Determination for the Presidential Permit.[11]

Thus, the State Department announced on November 10, 2011, that it would seek additional information and study alternative routes in Nebraska, given the extensive concerns regarding the proposed route through the Sand Hills area.[12] The Department estimated that the process, including issuance of a supplement to the final EIS and the subsequent public comment period, could be completed by early 2013.[13]

Following the State Department's announcement, President Obama stated his support for the Department's decision. The President noted the potential effects of the pipeline on health, safety, and the environment, as well as the extensive concerns raised through the public review and comment process. He concluded that "we should take the time to ensure that all questions are properly addressed and all the potential impacts are properly understood." [14] Further, the President stated that the final decision regarding the Keystone XL permit "should be guided by an open, transparent process that is informed by the best available science and the voices of the American people." [15]

On December 23, 2011, Congress passed the Temporary Payroll Tax Cut Continuation Act of 2011, H.R. 3765, which included a provision requiring the President to determine within 60 days whether the Keystone XL pipeline is in the national interest. On January 18, 2012, the State Department recommended to President Obama that the permit for the proposed pipeline be denied because the Department did not have sufficient time to obtain the information necessary to assess whether the project is in the national interest.[16] There was no identified alternative route through Ne-

[8] U.S. Department of State, *Supplemental Draft Environmental Impact Statement, Keystone XL Project, Applicant for Presidential Permit: TransCanada Keystone Pipeline, LP* at ES–4 (Apr. 22, 2011) (hereinafter "SDEIS").

[9] U.S. Department of State, *State Department Announces Next Steps in Keystone XL Pipeline Permit Process* (Mar. 15, 2011).

[10] *Id.*

[11] *Id.*

[12] U.S. Department of State, *Keystone XL Pipeline Project Review Process: Decision to Seek Additional Information* (Nov. 10, 2011).

[13] *Id.*

[14] The White House, *Statement by the President on the State Department's Keystone XL Pipeline Announcement* (Nov. 10, 2011).

[15] *Id.*

[16] U.S. Department of State, *Report to Congress Under the Temporary Payroll Tax Cut Continuation Act of 2011, Section 501(b)(2), Concerning the Presidential Permit Application of the Proposed Keystone XL Pipeline* (Jan. 2012).

braska that avoided the ecologically-sensitive Sand Hills area, so the ultimate route of the proposed pipeline was unknown.

Based on the State Department's recommendation, President Obama denied the pending application for the construction of the Keystone XL pipeline on January 18, 2012. The President stated that "the rushed and arbitrary deadline insisted on by Congressional Republicans prevented a full assessment of the pipeline's impact, especially the health and safety of the American people, as well as our environment."[17] TransCanada Corporation, the company that seeks to build the Keystone XL pipeline, can reapply for a permit at its discretion. According to the State Department, the "denial of the permit application does not preclude any subsequent permit application or applications for similar projects."[18]

In February 2012, TransCanada announced that it would move forward with construction of the southern leg of the Keystone XL pipeline, which would extend from Cushing, Oklahoma to the Gulf of Mexico. If pursued as a discrete project, the southern leg of the pipeline does not require a presidential permit, as it does not cross an international border. President Obama announced his support for the southern portion of the pipeline on March 22, 2012, all necessary federal permits were final as of July 2012, and construction of the southern portion began in August, although public protests and opposition have continued.[19]

H.R. 3548 would eliminate the need for a presidential permit for the Keystone XL pipeline, and it would give permitting authority to the Federal Energy Regulatory Commission solely for the Keystone XL pipeline. It would also eliminate all authority for FERC to exercise discretion regarding the permitting process, requiring FERC to issue a permit for the construction of the Keystone XL pipeline within 30 days of receipt of an application. If FERC does not act on the permit application within 30 days, the permit would be deemed to have been issued. In addition, the bill would prohibit FERC from imposing any conditions on the permit, without exception. The bill also provides that the applicant may make a substantial modification to the pipeline route or final EIS with FERC approval, upon expedited consideration.

With regard to the proposed pipeline route in Nebraska, H.R. 3548 requires FERC to enter into a memorandum of understanding with the State of Nebraska within 30 days of enactment to complete an environmental review of any modification to the proposed route through the State. FERC would be required to approve such a modification within 30 days of approval by the Governor of Nebraska. If FERC does not act on an application for approval of the modified route within 30 days, the modification would be deemed to have been issued. The bill would also allow construction of the pipeline to begin while the proposed Nebraska route modification is under consideration.

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[17] The White House, *Statement by President Barack Obama on the Keystone XL Pipeline* (Jan. 18, 2012).

[18] U.S. Department of State, *Media Note: Denial of the Keystone XL Pipeline Application* (Jan. 18, 2012).

[19] *See, e.g., Keystone XL pipeline construction begins amid protests,* Los Angeles Times (Aug. 16, 2012); *Keystone XL pipeline opponents turn to civil disobedience,* Washington Post (Oct. 15, 2012).

ANALYSIS

H.R. 3548 eliminates the President's authority to permit the Keystone XL pipeline, mandates approval of the pipeline, and overrides and short-circuits an appropriate review process for a highly controversial project with significant long-term effects. Even for many who want to see the Keystone XL pipeline built, H.R. 3548 is not an acceptable or appropriate way to move this project forward. The Administration needs sufficient time to get the necessary factual information to address the numerous and complex issues that have been raised regarding this project.

Supporters of H.R. 3548 assert that transferring the permitting authority for Keystone XL to FERC will simply move it to an agency with appropriate expertise. Congressman Terry stated that the bill takes a "rational approach" of giving the authority to "the federal agency that actually has experience in pipelines."[20] In actuality, this transfer of authority for a single pipeline project clearly is not intended to utilize FERC's technical expertise, as it gives FERC no discretion in the matter, requiring FERC to issue the permit within 30 days of receipt of the application and preventing FERC from establishing any conditions on the permit.

Supporters of H.R. 3548 also claim that this bill is necessary to avoid unnecessary delay in getting the Keystone XL pipeline built. Congressman Sullivan criticized the State Department's three-year review of the permit application as a "travesty" and asserted that it "is in our national interest to move forward with this pipeline."[21] However, there is reason to believe that the review process for Keystone XL has been entirely appropriate given the immense scope and considerable implications of the project. Likewise, the President's decision to deny the permit was necessary under the circumstances, as additional information was needed to properly evaluate the application, including the lack of a final route through Nebraska for the State Department to evaluate, and Congress had set an arbitrarily short deadline for an up-or-down decision under the Temporary Payroll Tax Cut Continuation Act of 2011.

Rather than allowing the existing review process to produce a decision based on relevant information, H.R. 3548 would create an unprecedented legislative earmark that would grant special treatment to one company for a single project, requiring FERC to rubberstamp the permit application for the Keystone XL pipeline. As one Nebraska ranch owner concerned about the pipeline testified before the Subcommittee on Energy and Power, "If the Keystone XL truly has merit, then it should be able to withstand a rigorous and comprehensive review that it deserves and has not gotten."[22]

Key issues that have been raised about the pipeline include whether it will enhance energy security, the extent to which it

[20] Statement of Representative Terry, Committee on Energy and Commerce, Subcommittee on Energy and Power, *American Jobs Now: A Legislative Hearing on H.R. 3548, the North American Energy Access Act,* 112th Cong. (Feb. 3, 2012).

[21] Statement of Representative Sullivan, Committee on Energy and Commerce, Subcommittee on Energy and Power, *American Jobs Now: A Legislative Hearing on H.R. 3548, the North American Energy Access Act,* 112th Cong. (Feb. 3, 2012).

[22] Testimony of Randall F. Thompson, Committee on Energy and Commerce, Subcommittee on Energy and Power, *American Jobs Now: A Legislative Hearing on H.R. 3548, the North American Energy Access Act,* 112th Cong. (Feb. 3, 2012).

would create jobs and use materials manufactured in North America, concerns regarding pipeline safety, and accusations of aggressive negotiating tactics by TransCanada Corporation, including using threats of eminent domain to take private property rights for the pipeline. There are also strong concerns related to climate change because the pipeline will import large quantities of tar sands crude, which has substantially higher lifecycle carbon emissions compared to conventional crude oil.

Supporters of the Keystone XL pipeline argue that it will enhance energy security by reducing reliance on oil imports from the Middle East and Venezuela. Other energy experts assert that the Keystone XL pipeline will not have any noticeable impact on America's energy security or will actually harm our security. Retired U.S. Army Brigadier General Steven Anderson testified before the Subcommittee: "I strongly oppose the Keystone XL pipeline because it will degrade our national security. The critical element is simply this: the pipeline keeps our great nation addicted to oil, a dependence that makes us both strategically and operationally vulnerable." [23] A report by EnSys for the Department of Energy found that construction of the pipeline would not substantively change the quantity of Canadian fuel imported to the United States because, if this pipeline were not built, market demand would drive broadly similar capacity.[24] In addition, a prominent oil market analyst asserted that the pipeline will facilitate the export of Canadian crude to countries other than the United States.[25] Most recently, the newest EIA projections find that dramatic improvements in fuel efficiency in vehicles, together with growing domestic oil production, will slash our reliance on imported oil by 25% between 2010 and 2020.[26]

Supporters of H.R. 3548 also assert that if the Keystone XL pipeline is not built, Canada's tar sands crude will be sent to Asia instead. In fact, this is by no means certain.[27] Expansions of existing pipelines to British Columbia could provide a limited amount of additional capacity. The new pipelines and expanded tanker operations that would be needed to supply capacity comparable to the Keystone XL pipeline face strong opposition in British Columbia and by a unified group of First Nations' peoples.[28]

The potential for job creation from the Keystone XL pipeline is another disputed issue. In the final EIS, the State Department estimated that approximately 5,000 to 6,000 temporary workers

[23] Testimony of Mr. Steven M. Anderson, Brigadier General (Retired), U.S. Army, Committee on Energy and Commerce, Subcommittee on Energy and Power, *American Jobs Now: A Legislative Hearing on H.R. 3548, the North American Energy Access Act,* 112th Cong. (Feb. 3, 2012).

[24] EnSys, *Keystone XL Assessment—Final Report,* 116 (Dec. 23, 2010).

[25] Philip K. Verleger, *The Tar Sands Road to China* (May 2011).

[26] U.S. Energy Information Administration, *Annual Energy Outlook Early Release 2013, Total Energy Supply, Disposition, and Price Summary, Reference case* (table) (online at www.eia.gov/oiaf/aeo/tablebrowser/#release=AEO2013ER&subject=9-AEO2013ER&table=1-AEO2013ER&region=0-0&cases=early2013-d102312a).

[27] *See* U.S. Department of State, *Final Environmental Impact Statement for the Proposed Keystone XL Project,* 3.14–62 (acknowledging that although various pipeline projects have been proposed to transport crude oil to the Canadian west coast "they face significant opposition in the regulatory process") (Aug. 26, 2011).

[28] *See, e.g., Gateway pipeline risks exceed rewards, B.C. Premier says,* Toronto Globe (Jul. 22, 2012); *First nations claim alliance is barrier that pipelines won't break,* Vancouver Sun (Dec. 1, 2011).

would be employed during the construction phase.[29] In data it submitted to the State Department, TransCanada, the company seeking to build the Keystone XL pipeline, predicted "a peak workforce of approximately 3,500 to 4,200 construction personnel."[30] Subsequently, however, the industry began citing much higher numbers. For example, TransCanada and the American Petroleum Institute have claimed that the project would generate 20,000 construction and manufacturing jobs in the short term.[31] This figure, which is three to four times higher than the State Department estimate and nearly five to six times higher than TransCanada's own original estimate, has been criticized as inflated.[32] In addition, a Perryman Group study commissioned by TransCanada predicts the project would result in more than 118,000 person-years of employment, including indirect and induced jobs, over the assumed 100-year lifetime of the project.[33] However, this figure also has been called into question as flawed and poorly documented by independent third-parties such as the Cornell University Global Labor Institute (GLI).[34] GLI's report concluded that the Keystone XL pipeline "will not be a major source of U.S. jobs, nor will it play any substantial role at all in putting Americans back to work."[35] The Washington Post Fact Checker also cast doubt on exaggerated claims that Keystone XL would create "tens of thousands" of jobs.[36]

It is also unclear to what extent steel and other materials and goods used in the Keystone XL pipeline will be sourced from the United States, despite claims that the project will significantly benefit our manufacturing industries. TransCanada has made repeated representations to congressional offices regarding the domestic manufacturing opportunities presented by the Keystone XL pipeline project. For instance, on December 2, 2011, Alex Pourbaix, TransCanada's president for energy and oil pipelines, testified before the Energy and Commerce Committee that "we are using the latest technologies and the strongest steel pipe from American mills to build the pipeline."[37] On February 2, 2012, TransCanada informed Committee staff that "[a]pproximately 74% of the pipe required for the Project in the United States was sourced from North American based mills—Evraz Regina Canada and Welspun Little

[29] U.S. Department of State, *Final Environmental Impact Statement for the Proposed Keystone XL Project, Executive Summary,* ES–22 (Aug. 26, 2011).

[30] TransCanada Keystone Pipeline, LP, *Keystone XL Project Environmental Report*, 2–42 (Nov. 2008).

[31] TransCanada, (online at www.transcanada.com/economic__benefits.html) (accessed on Nov. 30, 2011); American Petroleum Institute, *Keystone XL? The benefits are stacking up.* (2011) (online at www.api.org/aboutapi/ads/upload/Stacks_Up_KeystoneXL_COS.pdf) (accessed on Jan. 24, 2012).

[32] *See, e.g., Keystone Pipeline debate heats up,* Washington Post, (Nov. 5, 2011).

[33] The Perryman Group, *The Impact of Developing the Keystone XL Pipeline Project on Business Activity in the US* (June 2010).

[34] Cornell University Global Labor Institute, *Pipe Dreams? Jobs Gained, Jobs Lost by the Construction of Keystone XL,* 17–21 (Sep. 2011).

[35] *Id.* at 2.

[36] *Keystone pipeline jobs claims: a bipartisan fumble,* Washington Post (Dec. 14, 2011).

[37] Testimony of Alex Pourbaix, President, Energy and Oil Pipelines, TransCanada Corporation, Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on The American Energy Initiative: Expediting the Keystone XL Pipeline: Energy Security and Jobs,* 112th Cong. (Dec. 2, 2011).

Rock, U.S."[38] TransCanada also stated that "[w]e have not sourced any steel from India."[39]

Information obtained by Congressman Doyle indicates that these statements may not be accurate. On February 6, 2012, Welspun Tubular, LLC in Little Rock informed Congressman Doyle that the steel to be used in the construction of the Keystone XL pipeline was produced in India. The GLI also concluded that a significant portion of the pipes and components, and the steel used to manufacture them, are likely to be imported, significantly reducing any potential job impacts for U.S. manufacturing.[40] However, the majority reported H.R. 3548 without attempting to resolve these inconsistencies regarding materials sourcing and manufacturing, and thus without solid information regarding the degree to which the project would actually benefit American industry.

Pipeline safety and the risk of oil spills is another area of concern. Critics argue that bitumen is more corrosive than conventional oil and may exacerbate pipeline deterioration.[41] A series of recent ruptures and other pipeline failures in the United States and Canada, resulting in cumulative leaks of almost 2.5 million gallons of oil, have heightened these concerns.[42] In addition, reports of substandard foreign steel used by TransCanada in the leak-prone Keystone I pipeline and supplied by Welspun, the same company with which TransCanada has contracts for Keystone XL, have further contributed to safety concerns.[43] A whistleblower who worked as a safety inspector on TransCanada's first Keystone pipeline has raised numerous safety concerns about Keystone XL based on his experience, including that it will be "built with foreign materials which are not up to standards necessary for proper construction" to handle the high-pressure pumping of tar sands oil, which "has the consistency of peanut butter" and the abrasiveness of "heavy grit sandpaper."[44]

The potential for oil spills with Keystone XL has been of particular concern because the proposed route in Nebraska crossed the sensitive Sand Hills area. It is likely that an alternative route would still go through the Ogallala Aquifer, which is part of a system that supplies drinking water for 2 million people and provides about 30% of the groundwater used for irrigation in the U.S.[45] Randy Thompson, a Nebraska ranch owner whose property lies along the proposed path of the pipeline, testified before the Subcommittee on Energy and Power about the devastating effects that

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[38] Email from Government Relations Staff, TransCanada Corporation, to Staff, Energy and Commerce Committee (2:35pm, Feb. 2, 2012).

[39] Email from Government Relations Staff, TransCanada Corporation, to Staff, Energy and Commerce Committee (12:17pm, Feb. 2, 2012).

[40] Cornell University Global Labor Institute, *Pipe Dreams? Jobs Gained, Jobs Lost by the Construction of Keystone XL,* 11–13 (Sep. 2011).

[41] Anthony Swift et al., *Tar Sands Pipelines Safety Risks, a Joint Report by the Natural Resources Defense Council, National Wildlife Federation, Pipeline Safety Trust, and Sierra Club,* 6 (Feb. 2011) (online at www.nrdc.org/energy/files/tarsandssafetyrisks.pdf).

[42] *Regulators Warned Company on Pipeline Corrosion,* New York Times (Jul. 29, 2010); *Nearby Oil Spill Highlights Hazards in Area's Pipelines,* The New York Times (Sept. 16, 2010); *Oil Spill Largest in 36 Years,* Calgary Herald (May 5, 2011); *Keystone Pipeline Spill Raises Concerns About TransCanada 's Super-Sizing,* Forbes (May 11, 2011).

[43] Cornell University Global Labor Institute, *Pipe Dreams? Jobs Gained, Jobs Lost by the Construction of Keystone XL,* 13–14, 28–29 (Sep. 2011).

[44] Letter from Michael R. Klink to Representative Henry A. Waxman (Feb. 1, 2012).

[45] U.S. Geological Survey, *High Plains Regional Ground-Water Study* (online at http://co.water.usgs.gov/nawqa/hpgw/factsheets/DENNEHYFS1.html) (accessed on Feb. 10, 2012).

an oil spill would have on his livelihood, stating that his livestock watering wells and irrigation wells would "become virtually useless" if contaminated.[46]

Pursuant to a new bipartisan pipeline safety law, a study is underway by the Pipeline Hazardous Materials Safety Administration (PHMSA) to determine whether its existing regulations are sufficient to ensure the safety of pipelines used to transport diluted bitumen.[47] Cynthia Quarterman, the Administrator of PHMSA, testified before the Subcommittee on Energy and Power that the agency has not previously done a study to analyze the risks associated with transporting diluted bitumen.[48] Yet H.R. 3548 would force the approval of the Keystone XL pipeline project before a conclusion has been reached regarding the adequacy of existing pipeline safety standards.

H.R. 3548 also would hamstring FERC in any attempts to ensure the safety of the pipeline. The bill requires FERC to issue a permit for the Keystone XL pipeline within 30 days of receipt of the application. Such an expedited process does not allow for adequate regulatory review. FERC official Jeffrey Wright testified before the Subcommittee on Energy and Power that it was impossible to build a record that would yield a defensible decision in 30 days.[49] Furthermore, the bill prohibits FERC from imposing any conditions on the permit. Thus, even if FERC identified any safety concerns during the short period of time it will have for review, the agency would be prevented from addressing them, such as by establishing conditions that must be met in order to mitigate a safety problem.

Concerns have also been raised over reports of aggressive negotiating tactics by TransCanada Corporation to take the rights to private property along the proposed path of the pipeline. Even before a permit has been issued, TransCanada has been issuing offers to private property owners for the use of their land for the pipeline, and then threatening those private land owners with condemnation proceedings to take their land through eminent domain if they do not accept the offer within a short timeframe.[50] A letter from TransCanada to Randy Thompson states, "While we hope to acquire this property through negotiation, if we are unable to do so, we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property promptly after the expiration of this one month period." [51] As Mr. Thompson testified before the Subcommittee on Energy and Power, he and other citizens of Nebraska "view TransCanada as an overly-aggressive company" that has tried to "intimidate and bully their way

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[46] Testimony of Randall F. Thompson, Committee on Energy and Commerce, Subcommittee on Energy and Power, *American Jobs Now: A Legislative Hearing on H.R. 3548, the North American Energy Access Act,* 112th Cong. (Feb. 3, 2012).

[47] Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112–90.

[48] Testimony of the Honorable Cynthia L. Quarterman, Administrator, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on the American Energy Initiative: Pipeline Safety,* 112th Cong. (June 16, 2011).

[49] Testimony of Jeffrey C. Wright, Director, Office of Energy Projects, Federal Energy Regulatory Commission, Committee on Energy and Commerce, Subcommittee on Energy and Power, *American Jobs Now: A Legislative Hearing on H.R. 3548, the North American Energy Access Act,* 112th Cong. (Jan. 25, 2012).

[50] *Eminent Domain Fight Has a Canadian Twist,* The New York Times (Oct. 17, 2011).

[51] Letter from Tim Irons, Senior Land Coordinator, TransCanada Keystone Pipeline LP, to Randy Thompson, Nebraska ranch owner (July 21, 2010).

across our State."[52] Mr. Thompson further stated that he and other Nebraska land owners "feel that approval of this project would strip us of our individual property rights. We do not feel that a foreign corporation has any right to take our land for their private use and gain, especially when there has been no determination that this project is in the national interest."[53] H.R. 3548 would reward a foreign corporation with a legislative earmark for the Keystone XL pipeline, empowering TransCanada to continue in its efforts to take rights to private property along the proposed path of the pipeline.

Some of the strongest opposition to the Keystone XL pipeline stems from its effect on climate change. It is widely recognized that tar sands crudes have higher life-cycle greenhouse gas emissions than conventional crudes, and the final EIS found that the project could increase U.S. life-cycle greenhouse gas emissions by up to an additional 21 million metric tons of CO_2-equivalent annually.[54] EnSys projected that, if other pipeline projects are not approved, construction of Keystone XL would increase tar sands production by 800,000 barrels per day and increase global CO_2-equivalent emission by 20 million metric tons per year by 2030.[55]

Other environmental impacts of increased tar sands production include the destruction of Canada's boreal forests and wetlands, loss of habitat for wildlife and migratory birds, and the degradation of water and air quality.[56] EPA has also raised concerns about the health impacts on communities that live near refineries from increased emissions from refineries processing tar sands crude.[57]

The majority views dismiss the environmental concerns by asserting that oil sands production will increase with or without construction of Keystone XL. However, the International Energy Agency disagrees, finding that as much as 1 million barrels per day of production could fail to materialize if new pipelines are delayed.[58] Similarly, sources in the oil industry and Albertan government indicate that access to pipelines is key to industry's plans to more than double tar sands production by 2020.[59]

For the reasons stated above, we dissent from the views contained in the Committee's report.

HENRY A. WAXMAN.
BOBBY L. RUSH.

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[52] Testimony of Randall F. Thompson, Committee on Energy and Commerce, Subcommittee on Energy and Power, *American Jobs Now: A Legislative Hearing on H.R. 3548, the North American Energy Access Act,* 112th Cong. (Feb. 3, 2012).
[53] *Id.*
[54] U.S. Department of State, *Final Environmental Impact Statement for the Proposed Keystone XL Project,* 3.14–55 (Aug. 26, 2011).
[55] EnSys, *Keystone XL Assessment—Final Report* at 117 (Dec. 23, 2010); EnSys, *Keystone XL Assessment—Final Report,* Appendix, 40 (Dec. 23, 2010).
[56] See Woynillowicz et al., *Oil Sands Fever*, Pembina Institute, 36–52 (Nov. 2005).
[57] Letter from Cynthia Giles, Assistant Administrator for Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, to Jose W. Fernandez, Assistant Secretary, Economic, Energy and Business Affairs, U.S. Department of State and Dr. Kerri-Ann Jones, Assistant Secretary, Oceans and International Environmental and Scientific Affairs, U.S. Department of State (June 6, 2011).
[58] *Pipelines key to growth in North American crude output, IEA says,* Globe and Mail (June 17, 2011).
[59] *Untimely pipeline spills: TransCanada, Enbridge buffeted by accidents; Alberta frets over landlocked bitumen,* Petroleum News (June 19, 2011).