

**[DISCUSSION DRAFT]**

MARCH 4, 2013

113TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To approve the construction, operation, and maintenance of the Keystone  
XL pipeline, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. TERRY introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

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**A BILL**

To approve the construction, operation, and maintenance of  
the Keystone XL pipeline, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Northern Route Ap-  
5 proval Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1           (1) To maintain our Nation's competitive edge  
2           and ensure an economy built to last, the United  
3           States must have fast, reliable, resilient, and envi-  
4           ronmentally sound means of moving energy. In a  
5           global economy, we will compete for the world's in-  
6           vestments based in significant part on the quality of  
7           our infrastructure. Investing in the Nation's infra-  
8           structure provides immediate and long-term eco-  
9           nomic benefits for local communities and the Nation  
10          as a whole.

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

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

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

1           (5) The Department of State and other Federal  
2 agencies have over a long period time conducted ex-  
3 tensive studies and analysis of the technical aspects  
4 and of the environmental, social, and economic im-  
5 pacts of the proposed Keystone XL pipeline.

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

9           (7) The Keystone XL is in much the same posi-  
10 tion today as the Alaska Pipeline in 1973 prior to  
11 congressional action. Once again, the Federal regu-  
12 latory process remains an insurmountable obstacle  
13 to a project that is likely to reduce oil imports from  
14 insecure foreign sources.

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

16       Notwithstanding Executive Order No. 13337 (3  
17 U.S.C. 301 note), Executive Order No. 11423 (3 U.S.C.  
18 301 note), section 301 of title 3, United States Code, and  
19 any other Executive order or provision of law, no presi-  
20 dential permit shall be required for the pipeline described  
21 in the application filed on May 4, 2012, by TransCanada  
22 Keystone Pipeline, L.P. to the Department of State for  
23 the Keystone XL pipeline, as supplemented to include the  
24 Nebraska reroute evaluated in the Final Evaluation Re-  
25 port issued by the Nebraska Department of Environ-

1 mental Quality in January 2013 and approved by the Ne-  
2 braska governor. The final environmental impact state-  
3 ment issued by the Secretary of State on August 26, 2011,  
4 coupled with the Final Evaluation Report described in the  
5 previous sentence, shall be considered to satisfy all re-  
6 quirements of the National Environmental Policy Act of  
7 1969 (42 U.S.C. 4321 et seq.) and of the National His-  
8 toric Preservation Act (16 U.S.C. 470 et seq.).

9 **SEC. 4. JUDICIAL REVIEW.**

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

14 (1) the validity of any final order or action (in-  
15 cluding a failure to act) of any Federal agency or of-  
16 ficer with respect to issuance of a permit relating to  
17 the construction or maintenance of the Keystone XL  
18 pipeline, including any final order or action deemed  
19 to be taken, made, or issued;

20 (2) the constitutionality of any provision of this  
21 Act, or any decision made or action taken, or  
22 deemed to be made or taken, under this Act; or

23 (3) the adequacy of any environmental impact  
24 statement prepared under the National Environ-  
25 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.),

1 or of any analysis under any other Act, with respect  
2 to any action taken or deemed to be taken under  
3 this Act.

4 (b) DEADLINE FOR FILING CLAIM.—A claim arising  
5 under this Act may be brought not later than 60 days  
6 after the date of the decision or action giving rise to the  
7 claim.

8 (c) EXPEDITED CONSIDERATION.—The United  
9 States Court of Appeals for the District of Columbia Cir-  
10 cuit shall set any action brought under subsection (a) for  
11 expedited consideration, taking into account the national  
12 interest of enhancing national energy security by providing  
13 access to the significant oil reserves in Canada that are  
14 needed to meet the demand for oil.

15 **SEC. 5. AMERICAN BURYING BEETLE.**

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

17 (1) environmental reviews performed for the  
18 Keystone XL pipeline project satisfy the require-  
19 ments of section 7 of the Endangered Species Act of  
20 1973 (16 U.S.C. 1536(a)(2)) in its entirety; and

21 (2) for purposes of that Act, the Keystone XL  
22 pipeline project will not jeopardize the continued ex-  
23 istence of the American burying beetle or destroy or  
24 adversely modify American burying beetle critical  
25 habitat.

1 (b) BIOLOGICAL OPINION AND PERMIT.— The Sec-  
2 retary of the Interior is deemed to have issued an opinion  
3 containing such findings under section 7(b)(1)(A) of the  
4 Endangered Species Act of 1973 (16 U.S.C.  
5 1536(b)(1)(A)) and an accompanying incidental take per-  
6 mit that authorizes any taking of the American burying  
7 beetle that is incidental to, not the purpose of, and nec-  
8 essary for construction and operation of the Keystone XL  
9 pipeline as it may be ultimately defined, in its entirety.

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

11 The Secretary of the Interior is deemed to have  
12 granted or issued a grant of right-of-way and temporary  
13 use permit under section 28 of the Mineral Leasing Act  
14 (30 U.S.C. 185) and the Federal Land Policy and Man-  
15 agement Act of 1976 (43 U.S.C. 1701 et seq.), as set forth  
16 in the application tendered to the Bureau of Land Man-  
17 agement for the Keystone XL pipeline.

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

19 (a) ISSUANCE OF PERMITS.—The Secretary of the  
20 Army, not later than 90 days after receipt of an applica-  
21 tion therefore, shall issue all permits under section 404  
22 of the Federal Water Pollution Control Act (33 U.S.C.  
23 1344) and section 10 of the Act of March 3, 1899 (33  
24 U.S.C. 403; commonly known as the Rivers and Harbors  
25 Appropriations Act of 1899), necessary for the construc-

1 tion, operation, and maintenance of the pipeline described  
2 in the May 4, 2012, application referred to in section 3,  
3 as supplemented by the Nebraska reroute. The application  
4 shall be based on the administrative record for the pipeline  
5 as of the date of enactment of this Act, which shall be  
6 considered complete.

7 (b) WAIVER OF PROCEDURAL REQUIREMENTS.—The  
8 Secretary may waive any procedural requirement of law  
9 or regulation that the Secretary considers desirable to  
10 waive in order to accomplish the purposes of this section.

11 (c) ISSUANCE IN ABSENCE OF ACTION BY THE SEC-  
12 RETARY.—If the Secretary has not issued a permit de-  
13 scribed in subsection (a) on or before the last day of the  
14 90-day period referred to in subsection (a), the permit  
15 shall be considered to have been issued under section 404  
16 of the Federal Water Pollution Control Act (33 U.S.C.  
17 1344) or section 10 of the Act of March 3, 1899 (33  
18 U.S.C. 403), as appropriate, on the day following such last  
19 day.

20 (d) LIMITATION.—The Administrator of the Environ-  
21 mental Protection Agency may not prohibit or restrict an  
22 activity or use of an area that is authorized under this  
23 section.

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

2       The Secretary of Interior is deemed to have issued  
3 a special purpose permit under the Migratory Bird Treaty  
4 Act (16 U.S.C. 703 et seq.), as described in the applica-  
5 tion filed with the United States Fish and Wildlife Service  
6 for the Keystone XL pipeline on January 11, 2013.