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Keystone XL Legislation Moves Through Congress Despite Obama Veto Threat

114th Congress Begins With Renewed Keystone XL Pipeline Debate

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Policy Brief

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Key Takeaways:

- With a new Republican majority in Congress, the Keystone XL pipeline has its best chance to gain approval, despite President Obama's intent to veto a passing bill
- Both parties will use the Senate's open amendment process to attach energy provisions and messaging riders; the bill must gain 67 votes to gain "veto-proof" status
- Approval of the project would ease transportation constraints to refiners and decrease reliance on foreign imports, but would have minimal impact on benchmark WTI prices

Entities Mentioned:

- TransCanada
- CITCO Petroleum Corp
- Houston Refining LP TransCanada
- U.S. House of Representatives
- U.S. Senate
- Valero Refining Co

Related Research

[Energy Efficiency Resource Growth Hinges on State Policies and Financing Mechanisms](#)

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Fate of Keystone XL Bill could Rest with Senate Open Amendment Process

While the U.S. House of Representatives passed a Keystone XL approval bill quickly last week under suspension of the rules by a two-thirds majority vote, the Senate companion bill will face a prolonged battle under the open amendment process as Democrats and Republicans alike seek to attach strategic amendments before a vote on the floor.

In the House, the Keystone XL Pipeline Act (H.R. 3) passed by a vote of 266-153, with 23 House Democrats voting in support. Seven of these Democrat votes came from Texas. Keystone XL would link with existing pipelines to bring significant crude oil supplies to southern Texas refineries, providing additional state tax revenues. Overall, the states with most to gain from the project are those through which the pipeline – and associated southern pipelines – would cross: Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas; as well as those in which steel and other construction supplies are produced. Under the proposed legislation, the State Department's Final Supplemental Environmental Impact Statement (SEIS) – issued in January 2014 – would fully satisfy the National Environmental Policy Act (NEPA) requirements and other statutory provisions that require federal agency consultation or review. The legislation would approve the proposed Keystone XL project without presidential permit and would authorize TransCanada to construct and operate the Keystone XL pipeline and related cross-border facilities as described in its May 4, 2012 application. In response, in a January 5 briefing, White House Press Secretary Josh Earnest indicated President Obama's intent to veto the bill should it reach his desk, and a January 7 Statement of Administration Policy reaffirmed the Administration's stance with an official veto threat.

The fate of the bill now rests with the Senate. The near-identical Senate version, the Keystone XL Pipeline Act (S.1), was introduced by Sens. John Hoeven (R-ND) and Joe Manchin (D-WV) on January 6 and is cosponsored by 59 Senators. The bill passed the Senate Energy and Natural Resources Committee on Thursday, January 9, and it will now undergo amendments prior to reaching the Senate floor for a vote. The bill is expected to receive the 60 votes needed to pass the Senate, but supporters are pushing to reach the 67-vote mark, which would "veto-proof" the bill. As the legislation stands, reaching this number will be all but impossible, but the open amendment process pledged by new Majority Leader Mitch McConnell (R-KY) could put that goal within reach if Republicans can use the process to allow Democratic messaging provisions or the inclusion of other policy amendments to sway additional votes.

67 Senate votes would "veto-proof" the bill

One piece of the Democratic amendment strategy was foreshadowed during the January 9 Senate Energy and Natural Resources markup hearing. During the meeting, Sen. Sanders' (I-VT) introduced an amendment that would require Republicans to agree to a "sense of Congress" on climate change: that it is real, is caused by human activity, has caused "devastating problems," and that the U.S. must transform its energy system to address these problems. Democrats will likely use this and similar "messaging amendments" that will

have a hard time finding Republican traction to prolong debate and stall the bill's passage. Sen. Sanders' amendment was tabled for Senate floor discussion.

Another amendment – one with bipartisan support – that was introduced during the committee hearing from Sen. Portman (R-OH) would add four energy provisions to the bill. The amendment would promote commercial building energy efficiency through the “Tenant Star” program; advance energy storage through electric resistance water heaters; require federal agencies to coordinate and verify the use of energy efficiency technologies; and require federal disclosure of energy use data. Sen. Portman also withdrew the amendment from committee vote in order to expedite the bill's passage to the Senate floor. Both sides are expected to attach similar energy provisions to the bill, including more of those from the widely supported Energy Savings and Industrial Competitiveness Act that stalled during the 113th Congress.

Nebraska Ruling Places Obama's Decision on State Department Review

The Nebraska Supreme Court ruled last week to uphold the Keystone XL route through the state – a decision whose outcome was previously a key factor in President Obama's opposition to the current legislation. The proposed route through the sensitive Nebraska Sand Hills region has been a consistent source of contention, and the Supreme Court recent ruling could weaken President Obama's argument to veto a final legislative package.

In January 2013, Nebraska Governor Heineman approved a revised Nebraska route for the pipeline based on the Nebraska Department of Environmental Quality (NDEQ) finding that the pipeline construction and operation would have minimal impact predicated on 59 special conditions that TransCanada agreed to implement. However, in February 2014, the Lancaster County District struck down the 2012 statute (LB 1161) – which authorized Governor Heineman to approve the pipeline, ruling that LB 1161 violated state law by divesting the Public Service Commission control over oil pipeline routing decisions and vesting the regulatory control to NDEQ and the Governor.

This project roadblock was lifted early Friday, January 9, when the Nebraska Supreme Court could not reach the 5-vote super-majority to deem the state's LB1161 law unconstitutional, which would have sent the project to the state Public Service Commission for lengthy review. While the Nebraska case's uncertainty was a consistent talking point in the Administration's approval opposition, the White House has held its ground that it is yet still too early to approve the bill.

The President's primary opposition to the bill now rests with the circumvention of the State Department's completed analysis. Currently, the pipeline proposal is under State Department review to determine whether it serves the national interest based on several factors, including energy security, foreign policy, and regulatory compliance. In April 2014, the State Department notified eight federal agencies specified in Executive Order 13337 – Energy, Defense, Transportation, Homeland Security, Justice, the Interior, Commerce,

and the Environmental Protection Agency – that it will provide additional time to submit their views considering uncertainty created by the ongoing litigation in the Nebraska Supreme Court regarding the pipeline’s Nebraska route.

Now that the Nebraska Supreme Court has made its ruling, the Department of State will have to give the Executive Agencies a deadline to comment on projected impacts and the State Department’s January 2014 Environmental Impact Statement. The final decision will then move to Secretary Kerry. There is no indication from the State Department that Secretary Kerry has a deadline on his decision.

If Approved, Keystone XL Would Ease Canadian Crude Transport Constraints

Reducing dependence on foreign oil and creating thousands of domestic jobs are consistent pro-Keystone XL talking points. If approved, the proposed 875-mile Keystone XL pipeline would deliver up to 830,000 barrels per day (bpd) of oil sands extracted in Alberta (Canada) and crude from the Bakken shale formation in North Dakota and Montana to Steele City, Nebraska and subsequent delivery to Gulf Coast refineries.

Crude oil prices remain the key driver to Canadian oil sands production. The recent decline in domestic and global oil prices, if sustained, could impact Canadian oil sands production, as prices below \$65-75 per barrel challenge breakeven supply costs. Approval of the Keystone XL pipeline would ease transportation constraints, as much of the Canadian supply is moved by rail and more than three million bpd of existing pipeline capacity. The Keystone XL pipeline also would supply refiners such as Valero Refining Co, CITCO Petroleum Corp, and Houston Refining LP. This supply could ease reliance on imports from Venezuela, Mexico, and other South American countries. Still, despite the potential domestic heavy crude supply increase with an approved pipeline, the project would have minimal impacts on benchmark (West Texas Intermediate) prices, as this price is more tied to total domestic and global supply-demand factors, not to Canadian crude oil import capacity.

Sustained low crude prices could negatively impact Canadian production

Lengthy Decision on Keystone XL Could Impact Future Permitting Rules

Keystone XL has been the most highly debated pipeline in U.S. history, and the aftermath could result in legislation or executive action that would better define the presidential review process. TransCanada submitted its first Presidential Permit application for the proposed cross-border pipeline project in September 2008. President Obama denied the permit in January 2012, citing environmental concerns posed by the pipeline route through Nebraska’s Sand Hills region. Subsequently, TransCanada advanced the southern leg of the pipeline – Gulf Coast Project – which did not require a presidential permit as it does not cross an international border. In May 2012, TransCanada filed a new application for Keystone XL with a revised route.

Approximate Keystone XL (proposed) and Associated Pipeline Routes

Source: TransCanada

In January 2014, the State Department released its Final Supplemental Environmental Impact Statement (SEIS) for the proposed pipeline, reflecting more than 1.5 million comments elicited by the March 2013 Draft SEIS and more than 400,000 comments received during the scoping period. The Final SEIS found that approval or denial of the proposed pipeline would not affect the rate of Canadian oil sands extraction or U.S. refineries' heavy crude demand and hence the pipeline is unlikely to have significant effect on greenhouse gas (GHG) emissions. It assessed pipeline route alternatives and no-action alternatives – rail transport options – in the event of presidential permit denial. It found that emissions from two major route alternatives would be similar in scale to Keystone XL; emissions attributed to rail transport options (rail and pipeline, rail and tanker, and direct rail) would be 28-42 percent greater compared to Keystone XL. It also noted that TransCanada has agreed to incorporate additional mitigation measures, including 59 special conditions recommended by the Pipeline and Hazardous Materials Safety Administration (PHMSA). The report's socioeconomic analysis found that the pipeline construction would support approximately 42,100 jobs and approximately \$2B in earnings in the U.S and contribute approximately \$3.4B to U.S. gross domestic product (GDP). The 27 pipeline corridor counties – six in Montana, nine in South Dakota, and 12 in Nebraska – would experience most of the direct economic impacts.

Keystone XL Pipeline Legislative Activity (2011-2014)

2	July 26, 2011 – North American-Made Energy Security Act (H.R. 1938) aimed to expedite the permitting process with a November 1, 2011 deadline to issue Presidential Permit.
0	December 2, 2011 - North American Energy Access Act (H.R. 3548) to transfer permitting authority over the Keystone XL to the Federal Energy Regulatory Commission (FERC), requiring a permit within 30 days of enactment
1	December 13, 2011 – Middle Class Tax Relief and Job Creation Act with a provision requiring Presidential Permit approval within 60 days unless determined that the project does not serve the national interest.
1	December 23, 2011 – A bill unanimously approved by the House and Senate – and signed into law by President Obama – setting a 60-day deadline to issue Presidential Permit unless determined that the project does not serve the national interest
2	January 24, 2012 – Keystone for a Secure Tomorrow Act (H.R. 3811) which prescribes permit requirements to approve Keystone XL’s energy-related facilities and land transportation crossings on international boundaries.
0	February 16, 2012 – PIONEERS Act (H.R.3408) with language from the North American Energy Access Act (H.R. 3548) to remove presidential authority over the project and transfer it to the Federal Energy Regulatory Commission.
1	April 18, 2012 – Surface Transportation Extension Act (H.R. 4348) with language from H.R. 3548
2	May 18, 2012 – Motion to Instruct Conferees on H.R. 4348 to insist on Title II regarding Keystone XL approval
2	July 26 2012 – Domestic Energy and Jobs Act (S. 3445) to declare that no presidential permit would be required for the May 4, 2012 application
0	January 22, 2013 – Keystone For a Secure Tomorrow Act (H.R. 334) which included language of H.R. 3811
1	February 27 2013 – Energy Production and Project Delivery Act (S.17)which includes language of S. 3445
3	March 14, 2013 – A Bill to Approve the Keystone XL Pipeline (S. 582) would declare that no Executive Order, provision of law, or presidential permit would be required to construct the pipeline
2	October 22, 2013 – North American Energy Infrastructure Act (H.R. 3301) would declare that no presidential permit would be required for any oil or natural gas pipeline including cross-border segments
0	June 26, 2014 – Keystone XL Pipeline Approval Act (S 2554) to authorize the proposed Keystone XL pipeline and cross-border facilities specified in TransCanada’s May 4, 2012 application
1	September 18, 2014 – American Energy Solutions for Lower Costs and More American Jobs Act (H.R. 2) which included language of H.R. 3.
4	May 1, 2014 – Bill to Approve the Keystone XL Pipeline (S 2280) which included language of S 2554
	November 12, 2014 – Bill To Approve the Keystone XL Pipeline (H.R. 5682) – a parallel bill of S 2280

Source: Congress, EnerKnol Data

Moving forward, the long debate over Keystone XL could result in legislation that would better define the transparency and reliability of the presidential permit process as well as the rules surrounding judicial review of the President’s final decision. In particular, Congress could statutorily address decisions involving the NEPA analysis. Such legislation would likely pass the Republican-controlled 114th Congress only to be vetoed by President Obama, with the intent of re-introduction under a new Administration in 2016.

Disclosures Section

RESEARCH RISKS

Regulatory and Legislative agendas are subject to change.

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