



The Committee on Energy and Commerce

Memorandum

April 12, 2013

TO: Members, Subcommittee on Energy and Power

FROM: Committee Staff

RE: Subcommittee Markup of H.R. 3, the Northern Route Approval Act

The Subcommittee on Energy and Power has scheduled a markup on Tuesday, April 16, 2013, at 2:00 p.m. in 2123 Rayburn House Office Building. The markup agenda will cover H.R. 3, the Northern Route Approval Act.

In keeping with Chairman Upton's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to: peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

I. H.R. 3, THE NORTHERN ROUTE APPROVAL ACT

On March 15, 2013, Rep. Terry introduced the "Northern Route Approval Act". On April 10, 2013, the Subcommittee on Energy and Power held a legislative hearing on the bill. The bill includes the following provisions:

Section 1: Short Title

Section 1 provides the short title for the legislation, the "Northern Route Approval Act".

Section 2: Findings

Section 2 offers seven separate Congressional findings regarding the need for energy infrastructure, the national security benefits of Canadian oil imports, the employment and economic benefits from the Keystone XL pipeline, the review and approval by the State of Nebraska of the Keystone XL pipeline, the length and breadth of the Federal review process, the safety and environmental benefits of transporting oil via pipeline, and the resemblance to the action that was needed to approve the Alaska Pipeline in 1973.

Section 3: Keystone XL Permit Approval

Section 3 removes the requirement for a Presidential Permit for the Keystone XL pipeline described in the application filed by TransCanada on May 4, 2012, and that was supplemented to include the reroute approved by the Nebraska Governor. It deems the final EIS issued on August 26, 2011, and the Final Evaluation Report issued by the State of Nebraska to satisfy all requirements of NEPA and the National Historic Preservation Act (NHPA).

Section 4: Judicial Review

Section 4 vests, except for review by the Supreme Court, the U.S. Court of Appeal for the District of Columbia Circuit with sole jurisdiction over specifically listed legal challenges regarding Keystone XL pipeline. These are limited to the review of any final decisions by Federal agencies regarding the project, questions of constitutionality, and the adequacy of any analysis. Any claims must be brought within 60 days of a decision giving rise to a claim. Any action brought under this section shall receive expedited consideration.

Section 5: American Burying Beetle

Section 5 deems an incidental take permit to have been issued for the American burying beetle for the construction, operation and maintenance of the Keystone XL pipeline.

Section 6: Right-of-Way and Temporary Use Permit

Section 6 deems a right-of-way and temporary use permit to have been issued according to terms set forth in an application filed with BLM.

Section 7: Permits for Activities in Navigable Waters

Section 7 states that no later than 90 days after an application is filed, the Secretary of the Army shall issue all permits necessary under section 404 of the Federal Water Pollution Control Act and section 10 of the Rivers and Harbors Appropriations Act. The application shall be based on the administrative record which shall be considered complete. The Secretary is given the authority to waive any procedural requirements and if the Secretary has not issued the permits in 90 days then the permits are deemed to have been issued. The Administrator of the Environmental Protection Agency (EPA) may not prohibit or restrict any activities in this section.

Section 8: Migratory Bird Treaty Act Permit

Section 8 deems a special purpose permit under the Migratory Bird Treaty Act to have been issued that is described in an application filed with the U.S. Fish and Wildlife Service.

II. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Jason Knox or Tom Hassenboehler at (202) 225-2927.