

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2314

To delegate to the Secretary of State the authority to approve or deny certain permits.

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IN THE SENATE OF THE UNITED STATES

MAY 8, 2014

Mr. WALSH introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To delegate to the Secretary of State the authority to approve or deny certain permits.

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 “Removing Repeated  
5       Executive Delays to Transboundary Approvals of Pipe-  
6       lines and Engineering Act”.

7       **SEC. 2. FINDINGS.**

8       Congress finds that—

9               (1) the American Society of Civil Engineers re-  
10       cently assessed the infrastructure system of the

1 United States and gave the system an overall grade  
2 of D+;

3 (2) recent critical infrastructure decisions have  
4 become unacceptably politicized;

5 (3) permit applications for the Keystone XL  
6 Pipeline have been under review for over 5½ years;  
7 and

8 (4) Congress can alleviate political interference  
9 in critical infrastructure decisions by—

10 (A) directly delegating to the Secretary of  
11 State the authority to expedite review of per-  
12 mits necessary to accelerate the completion of  
13 energy production and transmission projects;  
14 and

15 (B) providing a systematic method for  
16 evaluating and permitting the constructing and  
17 maintenance of certain other border crossings  
18 for land transportation (including motor and  
19 rail vehicles) and other facilities.

20 **SEC. 3. DEFINITION OF SECRETARY.**

21 In this Act, the term “Secretary” means the Sec-  
22 retary of State.

23 **SEC. 4. CONSTITUTIONAL AUTHORITY.**

24 In accordance with clause 3 of section 8 of article  
25 I of the Constitution (delegating to Congress the power

1 to regulate commerce with foreign nations), Congress has  
2 the power to regulate the approval of infrastructure con-  
3 necting the United States with a foreign country.

4 **SEC. 5. DELEGATION OF AUTHORITY TO THE DEPARTMENT**  
5 **OF STATE.**

6 (a) IN GENERAL.—The Secretary is designated and  
7 empowered to receive all applications for permits for the  
8 construction, connection, operation, or maintenance, at  
9 the borders of the United States (other than applications  
10 received by the Secretary of Energy under laws in exist-  
11 ence on the date of enactment of this Act), of—

12 (1) facilities for the exportation or importation  
13 of petroleum, petroleum products, coal, or other  
14 fuels to or from a foreign country;

15 (2) pipelines, conveyor belts, and similar facili-  
16 ties for the exportation or importation of products  
17 (other than the products described in paragraph (1))  
18 to or from a foreign country;

19 (3) facilities for the exportation or importation  
20 of water or sewage to or from a foreign country;

21 (4) facilities for the transportation of persons,  
22 things, or both persons and things to or from a for-  
23 eign country;

24 (5) bridges, to the extent that congressional au-  
25 thorization is not otherwise required under law;

1           (6) facilities similar to the facilities otherwise  
2 described in this subsection that are located above or  
3 below ground; and

4           (7) border crossings for land transportation, in-  
5 cluding motor and rail vehicles, to or from a foreign  
6 country, whether or not in conjunction with the fa-  
7 cilities described in paragraph (4).

8 (b) REQUESTS FOR INFORMATION.—

9           (1) IN GENERAL.—On receipt of a completed  
10 application under subsection (a), the Secretary  
11 shall—

12           (A)(i) request any additional information  
13 needed from the applicant, as appropriate; and

14           (ii) refer the application to other agencies  
15 pursuant to paragraph (2);

16           (B) refer the application and pertinent in-  
17 formation to, and request the views of—

18           (i) the Secretary of Defense, the At-  
19 torney General, the Secretary of the Inte-  
20 rior, the Secretary of Commerce, the Sec-  
21 retary of Transportation, the Secretary of  
22 Energy, the Secretary of Homeland Secu-  
23 rity, the Administrator of the Environ-  
24 mental Protection Agency (or the heads of  
25 successor agencies); and

1 (ii) for applications concerning the  
2 border with Mexico, the United States  
3 Commissioner of the International Bound-  
4 ary and Water Commission; and

5 (C) refer the application and pertinent in-  
6 formation to, and request the views of, such  
7 other Federal department and agency heads as  
8 the Secretary determines appropriate.

9 (2) ADDITIONAL CONSULTATIONS.—The Sec-  
10 retary—

11 (A) may consult with State, tribal, and  
12 local government officials and foreign govern-  
13 ments, as the Secretary determines appropriate,  
14 with respect to an application under subsection  
15 (a); and

16 (B) shall request responses in a timely  
17 manner, not to exceed 90 days from the date of  
18 the request.

19 (3) FURTHER CONSIDERATION.—On receiving  
20 the views and assistance requested under paragraphs  
21 (1) and (2), the Secretary shall consider, in light of  
22 any statutory or other requirements or other consid-  
23 erations, whether additional information is necessary  
24 to evaluate the application and, as appropriate, re-  
25 quest the additional information from the applicant.

1           (4) PUBLIC COMMENT.—The Secretary may  
2 provide for—

3                   (A) the publication in the Federal Register  
4 of notice of receipt of applications;

5                   (B) the receipt of public comments on ap-  
6 plications; and

7                   (C) notices related to the issuance or de-  
8 nial of applications.

9 (c) COMPLIANCE.—

10           (1) IN GENERAL.—Subject to paragraph (2), a  
11 Federal agency consulted by the Secretary under  
12 subsection (b)(1) shall comply with the request of  
13 the Secretary (consistent with the authority of the  
14 Federal agency) as soon as practicable but not later  
15 than 90 days after the date on which the request is  
16 submitted.

17           (2) TIMING.—If a Federal agency consulted by  
18 the Secretary under subsection (b)(1) requests from  
19 the Secretary additional information that is nec-  
20 essary to carry out the request, the compliance dead-  
21 line under paragraph (1) shall not begin until the  
22 date on which the additional information is received.

23 (d) NATIONAL INTEREST DETERMINATION.—

24           (1) IN GENERAL.—After consideration of the  
25 views, assistance, and public comment received

1 under subsection (b), if the Secretary finds that  
2 issuance of a permit to the applicant would serve the  
3 national interest, the Secretary shall—

4 (A) prepare a permit, in such form and  
5 with such terms and conditions as the national  
6 interest requires, as determined by the Sec-  
7 retary; and

8 (B) notify the officials required to be con-  
9 sulted under subsection (b)(1)(B) of the pro-  
10 posed determination that a permit be issued.

11 (2) PROPOSED DENIAL.—After consideration of  
12 the views, assistance, and public comment received  
13 under subsection (b), if the Secretary finds that  
14 issuance of a permit to the applicant would not serve  
15 the national interest, the Secretary shall notify the  
16 officials required to be consulted under subsection  
17 (b)(1)(B) of the proposed determination that the ap-  
18 plication be denied.

19 (e) ISSUANCE OR DENIAL.—The Secretary shall issue  
20 or deny the permit in accordance with the proposed deter-  
21 mination under subsection (d).

22 (f) REGULATIONS.—The Secretary may promulgate  
23 such rules and regulations and prescribe such procedures  
24 (including rules, regulations, and procedures relating to  
25 the International Boundary and Water Commission) as

1 the Secretary determines necessary to carry out this sec-  
2 tion.

3 (g) PENDING APPLICATIONS.—Except as provided in  
4 section 6, this section shall apply only to applications for  
5 permits filed on or after the date of enactment of this Act.

6 (h) EFFECT.—Except as explicitly provided in this  
7 Act, nothing in this section limits the application of, or  
8 obligation to comply with, the requirements of any other  
9 Federal department or agency.

10 (i) FINAL RULE.—The decision made by the Sec-  
11 retary under subsection (e) shall be deemed to be a rule  
12 for purposes of chapter 8 of title 5, United States Code  
13 (commonly known as the “Congressional Review Act”).

14 **SEC. 6. KEYSTONE XL PIPELINE APPROVAL.**

15 (a) IN GENERAL.—TransCanada Keystone Pipeline,  
16 L.P. may construct, connect, operate, and maintain the  
17 pipeline and cross-border facilities described in the appli-  
18 cation filed on May 4, 2012, by TransCanada Corporation  
19 to the Department of State (including any subsequent re-  
20 vision to the pipeline route within the State of Nebraska  
21 required or authorized by the State of Nebraska).

22 (b) ENVIRONMENTAL IMPACT STATEMENT.—The  
23 Final Supplemental Environmental Impact Statement  
24 issued by the Secretary of State in January 2014, regard-  
25 ing the pipeline referred to in subsection (a), and the envi-



1 ronmental analysis, consultation, and review described in  
2 that document (including appendices) shall be considered  
3 to fully satisfy—

4 (1) all requirements of the National Environ-  
5 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.);  
6 and

7 (2) any other provision of law that requires  
8 Federal agency consultation or review (including the  
9 consultation or review required under section 7(a) of  
10 the Endangered Species Act of 1973 (16 U.S.C.  
11 1536(a))) with respect to the pipeline and facilities  
12 referred to in subsection (a).

13 (c) PERMITS.—Any Federal permit or authorization  
14 issued before the date of enactment of this Act for the  
15 pipeline and cross-border facilities referred to in sub-  
16 section (a) shall remain in effect.

17 (d) FEDERAL JUDICIAL REVIEW.—Any legal chal-  
18 lenge to a Federal agency action regarding the pipeline  
19 and cross-border facilities described in subsection (a), and  
20 the related facilities in the United States, that are ap-  
21 proved by this Act, and any permit, right-of-way, or other  
22 action taken to construct or complete the project pursuant  
23 to Federal law, shall only be subject to judicial review on  
24 direct appeal to the United States Court of Appeals for  
25 the District of Columbia Circuit.

1           (e) PRIVATE PROPERTY SAVINGS CLAUSE.—Nothing  
2 in this Act alters any Federal, State, or local process or  
3 condition in effect on the date of enactment of this Act  
4 that is necessary to secure access from an owner of private  
5 property to construct the pipeline and cross-border facili-  
6 ties described in subsection (a).

7 **SEC. 7. REVIEW OF CERTAIN EXECUTIVE ORDERS.**

8           The Comptroller General of the United States shall—

9           (1) conduct a review of any Executive order  
10 issued by the President that is not based on the ex-  
11 clusive constitutional authority of the President; and

12           (2) not later than 180 days after the date of  
13 enactment of this Act, submit to Congress a report  
14 on the results of the review.

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