

Keystone XL Will Shape Energy Debate For 114th Congress

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On Jan. 29, 2015, the U.S. Senate passed the Keystone XL Pipeline Approval Act by a vote of 62-36, with all Republicans and eight Democrats voting for the legislation. While President Obama pledged weeks ago to veto the legislation, the debate over it — and particularly over the nearly 250 amendments that were attached to it — foreshadows many of the energy and environmental policy issues that will occupy Congress' attention over the next two years.

Below is a summary of key themes that arose throughout the Keystone XL Pipeline debate, as well as analysis of how these issues will influence the debate over energy and environmental policy in the 114th Congress.

Climate Change

A number of climate change amendments were offered and several were voted on, although most were "Sense of the Senate" or "Sense of Congress" amendments that did not offer specific actionable measures and were therefore symbolic. The only climate-related amendment to the bill that was adopted was one stating that climate change "is real and is not a hoax." It received near-unanimous support in the Senate, but it did not take a position on anthropogenic climate change. Democrats will continue looking for opportunities to put Republicans on the record denying anthropogenic climate change, particularly as the 2016 elections approach. Democratic amendments seeking to establish a link between the proposed pipeline and climate change were also not adopted, but opponents of the pipeline will continue to pressure the Obama administration to veto the pipeline due to concerns about emissions of additional greenhouse gases into the atmosphere.

Republicans mostly limited their attempts to use the legislation as a mechanism for attacking President Obama's environmental regulations impacting the fossil fuel sectors. However, Republicans are not going to hold their fire forever, and their willingness to avoid some of the most contentious environmental issues likely resulted from their confidence that they will have additional opportunities to attack the president's environmental agenda on other bills in 2015 and 2016.

Stakeholders in particular should expect debate over the president's proposal to reduce greenhouse gas emissions from coal-fired power plants, the Obama administration's plan for reducing methane emissions



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from the coal, oil and natural gas sectors and president's efforts to reduce greenhouse gas emissions on the international stage through the U.N., World Bank and other multilateral institutions.

Energy Efficiency

The Keystone XL Pipeline legislation provided further evidence that energy efficiency can attract significant bipartisan support in Congress. For example, the only binding, actionable amendment adopted by the Senate was a modified version of a comprehensive energy efficiency bill. The language would promote reduced energy consumption in commercial buildings, exempt certain classes of water heaters from forthcoming U.S. Department of Energy regulations and require additional energy efficiency tracking and data disclosure from certain classes of federally leased buildings. That language, as well as a broader energy efficiency bill, had been pending in Congress for over a year with substantial support. Aware of increased public skepticism over partisanship and gridlock in Congress, both parties have used the legislation to demonstrate bipartisan credentials in an otherwise gridlocked Senate. As the 2016 elections approach, members of Congress — particularly vulnerable Republicans in Democratic-leaning states — will point to the legislation as an example of how they can work with Democrats on substantive policy issues.

Energy Exports

While the Keystone XL legislation was ostensibly about imports of Canadian oil sands, the number and variety of amendments dealing with energy exports spoke to Congress' interest in the energy paradigm shift currently underway in the U.S. as we continue growing as a major energy exporter. While various amendments to limit the export of the Canadian oil sands until certain conditions are met were considered and defeated, two amendments dealing with the export of liquefied natural gas and crude oil attracted more attention.

The LNG amendment, which would require the DOE to automatically approve all applications to export LNG to World Trade Organization countries, failed by a vote of 53-45. Another amendment, to lift the near-prohibitions on exporting crude oil from the U.S., was pulled from the floor and not voted on. Yet the outcome on both amendments should not lead one to conclude that these matters lack support. To the contrary, there is considerable bipartisan support in Congress for expediting the consideration and approval of LNG exports, as well as for promoting those exports as key tools in job creation and international diplomacy. While crude oil exports are on a different political and regulatory trajectory from LNG exports, momentum is building from certain constituencies to support lifting the ban. Neither of these issues is going away, and they will continue to be raised throughout the 114th Congress. Crude oil exports in particular will command additional attention as the presidential election season gets underway.

Environmental Protections

Every energy bill on the Senate floor over the last two decades has attracted a number of environmental issues and amendments, and the Keystone XL legislation was no exception. There is a pent-up frustration among mostly Republican members regarding environmental issues that will almost certainly reappear on other energy measures or during the appropriations process. Likewise, a number of Democratic members sought to underscore their agreement with the Obama administration on environmental issues and also show where they are frustrated by either a lack of movement or a policy disagreement. Many of the amendments and issues raised centered on home state, parochial issues that have generated significant local attention in some states. For example, one amendment would have subjected the practice of hydraulic fracturing to the jurisdiction of the Safe Drinking Water Act. This issue also reflects a broader

national issue, where the practice of fracking has punctuated the gulf between proponents of expanded supplies and economic development and environmental and public health advocates. This debate has taken place in dozens of states and municipalities, and will be brought up again and again by members of Congress as a reflection of a heated, ongoing debate taking place in so many jurisdictions across the country.

Other members, particularly in the West and Midwest, forced votes on environmental policies that have long generated controversy in their states. One amendment sought to return to “multiple use” status for certain federal lands that have long been treated by the government as wilderness, but which were never designated as such by Congress. (The Wilderness Act of 1964 explicitly leaves the designation of federal wilderness to Congress, but some subsequent laws have provided the executive branch with the authority to unilaterally designate lands with very similar protections.)

Another amendment would have prohibited the lesser prairie chicken from being protected under the Endangered Species Act, and yet another would have expedited processes for reviewing and approving drilling permits for oil and gas on federal lands. All of the amendments were defeated, but each of them carries considerable importance in the impacted states, and their congressional supporters will continue raising them to both criticize the Obama administration and promote their state’s interests as presidential candidates make the rounds in advance of the 2016 elections.

Conclusion

While only one actionable amendment to the Keystone XL Pipeline legislation was approved, many of the issues that were raised during the bill’s consideration will command Congress’ attention in 2015 and 2016. Assuming President Obama vetoes the legislation as expected, the fate of the pipeline will remain up in the air and Congress will continue to push for its approval. Climate change — and particularly the president’s policies to mitigate it — will be a key oversight topic for House and Senate Republicans. Democrats in both chambers will continue to raise the issue of anthropogenic climate change, especially the degree to which humans influence it, as we get closer to the 2016 elections.

At the same time, Republicans will continue to oppose the president’s environmental regulatory policies on issues ranging from air quality to endangered species, mainly due to the threats those policies may pose to jobs and local economies. Stakeholders should closely monitor developments with these and other key energy and environmental policy issues over the next several months, as many of them will come up and be vigorously debated for the remainder of the 114th Congress.

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