

ISSUE BRIEF

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Senate Energy Bill: Good Start, Room for Improvement

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Senator John Hoeven (R-ND) recently introduced the Domestic Energy and Jobs Act (DEJA), which would greatly expand access to energy and simplify burdensome regulations that prevent projects from coming online in a timely manner. While the legislation could be improved by further increasing access and removing the top-down energy planning, DEJA would still spur economic growth and drive energy production.

Increasing Access to Energy.

DEJA would accept the State Department's environmental review of the Keystone XL pipeline as sufficient and allow the state of Nebraska to reroute the pipeline to meet the state's environmental concerns. The State Department studied and addressed risks to soil, wetlands, water resources, vegetation, fish, wildlife, and endangered species

and concluded that construction of the pipeline would pose minimal environmental risk.¹ The construction of Keystone XL would allow up to 830,000 barrels of oil per day to come from Canada to the Gulf Coast and create thousands of jobs.

DEJA also directs the Department of the Interior (DOI) to conduct a lease sale off the coast of Virginia. The 2.9 million acres 50 miles off the coast has an estimated 130 million barrels of oil and 1.14 trillion cubic feet of natural gas. Opening access off Virginia's coast is long overdue, and the legislation only opens up a small portion of America's territorial waters that are off limits.

The Offshore Petroleum Expansion Now (OPEN) Act of 2012, also co-sponsored by Senator Hoeven, would replace President Obama's 2012–2017 Outer Continental Shelf Oil and Gas Leasing Program with a much more robust plan that opens areas in the Atlantic and Pacific Oceans, in the Gulf of Mexico, and off Alaska.²

Both DEJA and OPEN increase the royalties that states would receive from energy production, but both could go further to increase state involvement in offshore drilling decisions. Since onshore states

already receive 50 percent of the royalties, Congress should also implement a 50/50 royalty-sharing program between federal and state governments involved in offshore drilling.

Efficient Permitting and Leasing for All Energy Projects.

Another important component of DEJA is that it streamlines the permitting of all energy projects. Receiving a permit for any energy project, not just fossil fuels, takes entirely too long. Duplicative and unnecessary regulations slow the process and drive up costs. Furthermore, environmental activists delay new energy projects by filing endless administrative appeals and lawsuits. DEJA would create a manageable time frame for permitting for all energy sources to increase supply at lower costs and stimulate economic activity.

DEJA also calls for an end to the lengthy permit process in the Natural Petroleum Reserve area of Alaska. It would require the DOI to approve drilling permits within 60 days and infrastructure permits within six months.

Lease certainty is another critical issue. The act states that the DOI cannot cancel or withdraw a lease

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sale after the winning company pays for the lease. Ensuring that the federal government does not pull the rug out from under a company that wins the lease sale would provide the certainty necessary to pursue energy projects.

Freeze and Study

Environmental Regulations. DEJA would also create transparency and accountability for Environmental Protection Agency (EPA) regulations by establishing an interagency committee that would report on the full economic impact of the rules implemented by the EPA that affect fuel prices. This includes any part of the production process that would be affected by greenhouse gas regulations.

DEJA delays the implementation of Tier 3 fuel standards (designed to replace the Tier 2 regulations issued in 2000) that would lower the amount of sulfur in gasoline but could add 6–9 cents per gallon to the cost of manufacturing gasoline. The EPA has declared no measurable air quality benefits from these standards.

DEJA delays the New Source Performance Standards for refineries, which would drive up the cost of gasoline for no measurable change in the earth's temperature.³ It would also delay new national ambient air quality standards for ozone, which are

unnecessary because the ozone standard set by the EPA is already more than stringent enough to protect human health. Though the delays contained in DEJA underscore the problems with these regulations, the preferred approach would be to prohibit the implementation of these three standards altogether.

DEJA would also prevent the DOI from issuing any rule under the Surface Mining Control and Reclamation Act of 1977 before 2014 that would adversely affect coal employment, reduce revenue from coal production, reduce coal for domestic consumption or export, designate areas as unsuitable for surface mining and reclamation, or expose the U.S. to liability by taking privately owned coal through regulation.

While this temporary fix recognizes the federal overreach in coal production, a better approach would be to create a framework that restricts overregulation, empowers the states, balances economic growth and environmental well-being, and creates a timely permitting process for all aspects of coal production.⁴

Energy Central Planning Unneeded. DEJA would require the federal government to create production objectives for fossil fuels and renewable energy and allow the relevant agencies to make additional

lands available to meet those objectives. The bill would also require the U.S. Geological Survey to establish a critical minerals list and create comprehensive policies to increase critical mineral production.

A much simpler and effective solution would be to open all federal lands for energy production of all sources and allow the private sector to determine what sources of energy and what technologies meet America's electricity and transportation fuel demand. Too often the use of critical minerals has been used as cover for subsidies and extensive government intervention in a major industry. If there are clear military needs for certain critical materials, these should be met by government action. Absent that, streamlining the bureaucracy that has expanded around mining and opening access is the only necessary federal action surrounding critical minerals.

Also alarming is that DEJA defines clean energy technology as one that reduces, avoids, or sequesters greenhouse gas emissions. While there is much debate in the scientific community as to the magnitude of greenhouse gas emissions affecting climate change, Congress should focus on promoting scientific integrity and outcomes that achieve real environmental benefits.⁵ This should include a fundamental overhaul of

1. U.S. Department of State, "Final Environmental Impact Statement for the Proposed Keystone XL Project," Executive Summary, August 26, 2011, http://keystonepipeline-xl.state.gov/archive/dos_docs/feis/index.htm (accessed July 29, 2012).
2. U.S. Senate Committee on Energy and Natural Resources, "Senators Introduce Bipartisan Legislation Expanding Offshore Leasing," July 25, 2012, <http://www.energy.senate.gov/public/index.cfm/republican-news?ID=d7650df0-58f3-414d-a9ce-0e8701ee99b8> (accessed July 29, 2012).
3. Chip Knappenberger, "Climate Impacts of Waxman-Markey (the IPCC-Based Arithmetic of No Gain)," MasterResource, May 6, 2009, <http://masterresource.org/?p=2355> (accessed July 29, 2012).
4. Nicolas D. Loris, "The Assault on Coal and the American Consumers," Heritage Foundation *Backgrounder* No. 2709, July 23, 2012, <http://www.heritage.org/research/reports/2012/07/the-assault-on-coal-and-american-consumers> (accessed July 29, 2012).
5. David W. Kreuzer and Roy W. Spencer, "Carbon Dioxide Regulation and the American Conservation Ethic," The Heritage Foundation, http://thf_media.s3.amazonaws.com/2012/EnvironmentalConservation/Chapter8-Carbon-Dioxide-Regulation-and-the-American-Conservation-Ethic.pdf (accessed July 30, 2012).

major environmental statutes and managing natural resources on a site- and situation-specific basis.⁶

Remove Federal Impediments and Federal Planning. Government restrictions and regulations are significantly impeding the market's effectiveness in responding to changes in energy prices and making it difficult for suppliers of all types of energy to produce energy and create jobs. DEJA would provide America with much needed energy supply and

a much needed economic stimulus. However, rather than attempting to create federal energy production goals, Congress needs to simply remove the unnecessary bureaucracies that prohibit the market from responding to price changes.

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6. The Heritage Foundation, "Environmental Conservation," July 27, 2012, <http://www.heritage.org/research/projects/environmental-conservation> (accessed August 2, 2012).