

113TH CONGRESS
1ST SESSION

H. R. 761

To require the Secretary of the Interior and the Secretary of Agriculture to more efficiently develop domestic sources of the minerals and mineral materials of strategic and critical importance to United States economic and national security and manufacturing competitiveness.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2013

Mr. AMODEI (for himself, Mr. GOSAR, Mr. LAMBORN, Mr. BISHOP of Utah, Mr. JONES, Mr. WALBERG, Mr. FRANKS of Arizona, Mr. HECK of Nevada, Mr. TIPTON, Mr. WALDEN, Mr. STIVERS, Mr. JOHNSON of Ohio, Mr. LATTA, Mr. YOUNG of Alaska, Mr. CONAWAY, Mr. BENISHEK, Mr. DAINES, Mr. GARDNER, Mr. SCHWEIKERT, Mr. MATHESON, Mr. BISHOP of Georgia, Mr. LABRADOR, Mr. STEWART, Mr. CHAFFETZ, Mr. SALMON, Mr. SIMPSON, Mr. GOHMERT, Mr. PEARCE, and Mr. LUETKEMEYER) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require the Secretary of the Interior and the Secretary of Agriculture to more efficiently develop domestic sources of the minerals and mineral materials of strategic and critical importance to United States economic and national security and manufacturing competitiveness.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Strategic and
3 Critical Minerals Production Act of 2013”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The industrialization of China and India
7 has driven demand for nonfuel mineral commodities,
8 sparking a period of resource nationalism exempli-
9 fied by China’s reduction in exports of rare-earth
10 elements necessary for telecommunications, military
11 technologies, healthcare technologies, and conven-
12 tional and renewable energy technologies.

13 (2) The availability of minerals and mineral
14 materials are essential for economic growth, national
15 security, technological innovation, and the manufac-
16 turing and agricultural supply chain.

17 (3) The exploration, production, processing,
18 use, and recycling of minerals contribute signifi-
19 cantly to the economic well-being, security and gen-
20 eral welfare of the Nation.

21 (4) The United States has vast mineral re-
22 sources, but is becoming increasingly dependent
23 upon foreign sources of these mineral materials, as
24 demonstrated by the following:

25 (A) Twenty-five years ago the United
26 States was dependent on foreign sources for 30

1 nonfuel mineral materials, 6 of which the
2 United States imported 100 percent of the Na-
3 tion's requirements, and for another 16 com-
4 modities the United States imported more than
5 60 percent of the Nation's needs.

6 (B) By 2011 the United States import de-
7 pendence for nonfuel mineral materials had
8 more than doubled from 30 to 67 commodities,
9 19 of which the United States imported 100
10 percent of the Nation's requirements, and for
11 another 24 commodities, imported more than
12 50 percent of the Nation's needs.

13 (C) The United States share of worldwide
14 mineral exploration dollars was 8 percent in
15 2011, down from 19 percent in the early 1990s.

16 (D) In the 2012 Ranking of Countries for
17 Mining Investment, out of 25 major mining
18 countries, the United States ranked last with
19 Papua New Guinea in permitting delays, and
20 towards the bottom regarding government take
21 and social issues affecting mining.

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

1 (1) STRATEGIC AND CRITICAL MINERALS.—The
2 term “strategic and critical minerals” means min-
3 erals that are necessary—

4 (A) for national defense and national secu-
5 rity requirements;

6 (B) for the Nation’s energy infrastructure,
7 including pipelines, refining capacity, electrical
8 power generation and transmission, and renew-
9 able energy production;

10 (C) to support domestic manufacturing,
11 agriculture, housing, telecommunications,
12 healthcare, and transportation infrastructure;
13 and

14 (D) for the Nation’s economic security and
15 balance of trade.

16 (2) AGENCY.—The term “agency” means any
17 agency, department, or other unit of Federal, State,
18 local, or tribal government, or Alaska Native Cor-
19 poration.

20 (3) MINERAL EXPLORATION OR MINE PER-
21 MIT.—The term “mineral exploration or mine per-
22 mit” includes plans of operation issued by the Bu-
23 reau of Land Management and the Forest Service
24 pursuant to 43 C.F.R. 3809 and 36 C.F.R. 228A,
25 respectively.

1 **TITLE I—DEVELOPMENT OF DO-**
2 **MESTIC SOURCES OF STRA-**
3 **TEGIC AND CRITICAL MIN-**
4 **ERALS**

5 **SEC. 101. IMPROVING DEVELOPMENT OF STRATEGIC AND**
6 **CRITICAL MINERALS.**

7 Domestic mines that will provide strategic and crit-
8 ical minerals shall be considered an “infrastructure
9 project” as described in Presidential Order “Improving
10 Performance of Federal Permitting and Review of Infra-
11 structure Projects” dated March 22, 2012.

12 **SEC. 102. RESPONSIBILITIES OF THE LEAD AGENCY.**

13 (a) IN GENERAL.—The lead agency with responsi-
14 bility for issuing a mineral exploration or mine permit
15 shall appoint a project lead who shall coordinate and con-
16 sult with other agencies, cooperating agencies, project pro-
17 ponents and contractors to ensure that agencies minimize
18 delays, set and adhere to timelines and schedules for com-
19 pletion of reviews, set clear permitting goals and track
20 progress against those goals.

21 (b) DETERMINATION UNDER NEPA.—The lead
22 agency with responsibility for issuing a mineral explo-
23 ration or mine permit shall determine any such action
24 would not constitute a major Federal action significantly
25 affecting the quality of the human environment within the

1 meaning of the National Environmental Policy Act of
2 1969 if the procedural and substantive safeguards of the
3 lead agency's permitting process alone, any applicable
4 State permitting process alone, or a combination of the
5 two processes together provide an adequate mechanism to
6 ensure that environmental factors are taken into account.

7 (c) COORDINATION ON PERMITTING AND REVIEW.—

8 The lead agency with responsibility for issuing a mineral
9 exploration or mine permit shall enhance government co-
10 ordination on permitting and review by avoiding duplica-
11 tive reviews, minimizing paperwork and engaging other
12 agencies and stakeholders early in the process. The lead
13 agency shall consider the following best practices:

14 (1) Deferring to and relying upon baseline data,
15 analysis and reviews preformed by State agencies
16 with jurisdiction over the proposed project.

17 (2) Conducting reviews concurrently rather
18 than sequentially to the extent practicable and when
19 such concurrent review will expedite rather than
20 delay a decision.

21 (d) TIME LIMITS FOR PERMIT REVIEW PROCESS.—

22 At the request of a project proponent, the project lead of
23 the agency with responsibility for issuing a mineral explo-
24 ration or mine permit shall enter into an agreement with
25 the project proponent and other cooperating agencies that

1 sets time limits for each part of the permit review process
2 including the following:

3 (1) The decision on whether to prepare a docu-
4 ment required under the National Environmental
5 Policy Act of 1969.

6 (2) A determination of the scope of any docu-
7 ment required under the National Environmental
8 Policy Act of 1969.

9 (3) The scope of and schedule for the baseline
10 studies required to prepare a document required
11 under the National Environmental Policy Act of
12 1969.

13 (4) Preparation of any draft document required
14 under the National Environmental Policy Act of
15 1969.

16 (5) Preparation of a final document required
17 under the National Environmental Policy Act of
18 1969.

19 (6) Consultations required under applicable
20 laws.

21 (7) Submission and review of any comments re-
22 quired under applicable law.

23 (8) Publication of any public notices required
24 under applicable law.

25 (9) A final or any interim decisions.

1 (e) TIME LIMIT FOR TOTAL REVIEW PROCESS.—In
2 no case should the total review process described in sub-
3 section (d) exceed 30 months unless agreed to by the sig-
4 natories of the agreement.

5 (f) LIMITATION ON ADDRESSING PUBLIC COM-
6 MENTS.—The lead agency is not required to address agen-
7 cy or public comments that were not submitted during the
8 public comment periods provided by the lead agency or
9 otherwise required by law.

10 (g) FINANCIAL ASSURANCE.—The lead agency will
11 determine the amount of financial assurance for reclama-
12 tion of a mineral exploration or mining site, which must
13 cover the estimated cost if the lead agency were to con-
14 tract with a third party to reclaim the operations accord-
15 ing to the reclamation plan, including construction and
16 maintenance costs for any treatment facilities necessary
17 to meet Federal, State or tribal environmental standards.

18 (h) APPLICATION TO EXISTING PERMIT APPLICA-
19 TIONS.—This section shall apply with respect to a mineral
20 exploration or mine permit for which an application was
21 submitted before the date of the enactment of this Act
22 if the applicant for the permit submits a written request
23 to the lead agency for the permit. The lead agency shall
24 begin implementing this section with respect to such appli-
25 cation within 30 days after receiving such written request.

1 (i) STRATEGIC AND CRITICAL MATERIALS WITHIN
2 NATIONAL FORESTS.—With respect to strategic and crit-
3 ical materials within a federally administered unit of the
4 National Forest System, the lead agency shall—

5 (1) exempt all areas of identified mineral re-
6 sources in Land Use Designations, other than Non-
7 Development Land Use Designations, in existence as
8 of the date of the enactment of this Act from the
9 procedures detailed at and all rules promulgated
10 under part 294 of title 36, Code for Federal Regula-
11 tions;

12 (2) apply such exemption to all additional
13 routes and areas that the lead agency finds nec-
14 essary to facilitate the construction, operation, main-
15 tenance, and restoration of the areas of identified
16 mineral resources described in paragraph (1); and

17 (3) continue to apply such exemptions after ap-
18 proval of the Minerals Plan of Operations for the
19 unit of the National Forest System.

20 **SEC. 103. CONSERVATION OF THE RESOURCE.**

21 In developing the mineral exploration or mine permit,
22 the priority of the lead agency shall be to maximize the
23 development of the mineral resource, while mitigating en-
24 vironmental impacts, so that more of the mineral resource
25 can be brought to the market place.

1 **SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EX-**
2 **PLORATION AND MINING PROJECTS.**

3 (a) PREPARATION OF FEDERAL NOTICES FOR MIN-
4 ERAL EXPLORATION AND MINE DEVELOPMENT
5 PROJECTS.—The preparation of Federal Register notices
6 required by law associated with the issuance of a mineral
7 exploration or mine permit shall be delegated to the orga-
8 nization level within the agency responsible for issuing the
9 mineral exploration or mine permit. All Federal Register
10 notices regarding official document availability, announce-
11 ments of meetings, or notices of intent to undertake an
12 action shall be originated and transmitted to the Federal
13 Register from the office where documents are held, meet-
14 ings are held, or the activity is initiated.

15 (b) DEPARTMENTAL REVIEW OF FEDERAL REG-
16 ISTER NOTICES FOR MINERAL EXPLORATION AND MIN-
17 ING PROJECTS.—Absent any extraordinary circumstance
18 or except as otherwise required by any Act of Congress,
19 each Federal Register notice described in subsection (a)
20 shall undergo any required reviews within the Department
21 of the Interior or the Department of Agriculture and be
22 published in its final form in the Federal Register no later
23 than 30 days after its initial preparation.

1 **TITLE II—JUDICIAL REVIEW OF**
2 **AGENCY ACTIONS RELATING**
3 **TO EXPLORATION AND MINE**
4 **PERMITS**

5 **SEC. 201. DEFINITIONS FOR TITLE.**

6 In this title the term “covered civil action” means a
7 civil action against the Federal Government containing a
8 claim under section 702 of title 5, United States Code,
9 regarding agency action affecting a mineral exploration or
10 mine permit.

11 **SEC. 202. TIMELY FILINGS.**

12 A covered civil action is barred unless filed no later
13 than the end of the 60-day period beginning on the date
14 of the final Federal agency action to which it relates.

15 **SEC. 203. RIGHT TO INTERVENE.**

16 The holder of any mineral exploration or mine permit
17 may intervene as of right in any covered civil action by
18 a person affecting rights or obligations of the permit hold-
19 er under the permit.

20 **SEC. 204. EXPEDITION IN HEARING AND DETERMINING THE**
21 **ACTION.**

22 The court shall endeavor to hear and determine any
23 covered civil action as expeditiously as possible.

1 **SEC. 205. LIMITATION ON PROSPECTIVE RELIEF.**

2 In a covered civil action, the court shall not grant
3 or approve any prospective relief unless the court finds
4 that such relief is narrowly drawn, extends no further than
5 necessary to correct the violation of a legal requirement,
6 and is the least intrusive means necessary to correct that
7 violation.

8 **SEC. 206. LIMITATION ON ATTORNEYS' FEES.**

9 Sections 504 of title 5, United States Code, and 2412
10 of title 28, United States Code (together commonly called
11 the Equal Access to Justice Act) do not apply to a covered
12 civil action, nor shall any party in such a covered civil ac-
13 tion receive payment from the Federal Government for
14 their attorneys' fees, expenses, and other court costs.

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