

Union Calendar No. 100

113TH CONGRESS
1ST SESSION

H. R. 761

[Report No. 113–138, Part I]

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

JULY 8, 2013

Additional sponsors: Mr. COFFMAN, Mr. AUSTIN SCOTT of Georgia, Mr. MCCLINTOCK, Mr. FINCHER, Mr. GRAVES of Georgia, Mrs. LUMMIS, Mr. SOUTHERLAND, Mr. SCHOCK, Mr. FLORES, Mr. HARRIS, Mr. CRAMER, Mr. GRIMM, Mrs. BACHMANN, Mr. BUCSHON, Mr. DUNCAN of South Carolina, Mr. NUNNELEE, Mr. WEBER of Texas, Mr. ROGERS of Michigan, Mr. ROSS, Mr. KLINE, Mrs. McMORRIS RODGERS, Mr. LONG, Mr. MEADOWS, Mr. RADEL, Mr. WESTMORELAND, Mr. THOMPSON of Pennsylvania, Mr. DIAZ-BALART, Mrs. MILLER of Michigan, and Mr. ROHR-ABACHER

JULY 8, 2013

Reported from the Committee on Natural Resources with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 8, 2013

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 15, 2013]

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “National Strategic and*
5 *Critical Minerals Production Act of 2013”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds the following:*

8 *(1) The industrialization of China and India*
9 *has driven demand for nonfuel mineral commodities,*
10 *sparking a period of resource nationalism exemplified*
11 *by China’s reduction in exports of rare-earth elements*
12 *necessary for telecommunications, military tech-*
13 *nologies, healthcare technologies, and conventional*
14 *and renewable energy technologies.*

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

19 *(3) The exploration, production, processing, use,*
20 *and recycling of minerals contribute significantly to*
21 *the economic well-being, security and general welfare*
22 *of the Nation.*

23 *(4) The United States has vast mineral re-*
24 *sources, but is becoming increasingly dependent upon*

1 *foreign sources of these mineral materials, as dem-*
2 *onstrated by the following:*

3 *(A) Twenty-five years ago the United States*
4 *was dependent on foreign sources for 30 nonfuel*
5 *mineral materials, 6 of which the United States*
6 *imported 100 percent of the Nation's require-*
7 *ments, and for another 16 commodities the*
8 *United States imported more than 60 percent of*
9 *the Nation's needs.*

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

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

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

1 **SEC. 3. DEFINITIONS.**

2 *In this Act:*

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

6 (A) *for national defense and national secu-*
7 *rity requirements;*

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

12 (C) *to support domestic manufacturing, ag-*
13 *riculture, housing, telecommunications,*
14 *healthcare, and transportation infrastructure; or*

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

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

21 (3) *MINERAL EXPLORATION OR MINE PERMIT.*—
22 *The term “mineral exploration or mine permit” in-*
23 *cludes plans of operation issued by the Bureau of*
24 *Land Management and the Forest Service pursuant*
25 *to 43 C.F.R. 3809 and 36 C.F.R. 228A or the au-*
26 *thorities listed in 43 C.F.R. 3503.13, 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 critical*
8 *minerals shall be considered an “infrastructure project” as*
9 *described in Presidential Order “Improving Performance of*
10 *Federal Permitting and Review of Infrastructure Projects”*
11 *dated March 22, 2012.*

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

13 *(a) IN GENERAL.—The lead agency with responsibility*
14 *for issuing a mineral exploration or mine permit shall ap-*
15 *point a project lead who shall coordinate and consult with*
16 *cooperating agencies and any other agency involved in the*
17 *permitting process, project proponents and contractors to*
18 *ensure that agencies minimize delays, set and adhere to*
19 *timelines and schedules for completion of the permitting*
20 *process, set clear permitting goals and track progress*
21 *against those goals.*

22 *(b) DETERMINATION UNDER NEPA.—To the extent*
23 *that the National Environmental Policy Act of 1969 applies*
24 *to any mineral exploration or mine permit, the lead agency*
25 *with responsibility for issuing a mineral exploration or*

1 mine permit shall determine that the action to approve the
2 exploration or mine permit does not constitute a major Fed-
3 eral action significantly affecting the quality of the human
4 environment within the meaning of the National Environ-
5 mental Policy Act of 1969 if the procedural and substantive
6 safeguards of the permitting process alone, any applicable
7 State permitting process alone, or a combination of the two
8 processes together provide an adequate mechanism to ensure
9 that environmental factors are taken into account.

10 (c) *COORDINATION ON PERMITTING PROCESS.*—The
11 lead agency with responsibility for issuing a mineral explo-
12 ration or mine permit shall enhance government coordina-
13 tion for the permitting process by avoiding duplicative re-
14 views, minimizing paperwork and engaging other agencies
15 and stakeholders early in the process. The lead agency shall
16 consider the following best practices:

17 (1) *Deferring to and relying upon baseline data,*
18 *analyses and reviews performed by State agencies*
19 *with jurisdiction over the proposed project.*

20 (2) *Conducting any consultations or reviews con-*
21 *currently rather than sequentially to the extent prac-*
22 *ticable and when such concurrent review will expedite*
23 *rather than delay a decision.*

24 (d) *SCHEDULE FOR PERMITTING PROCESS.*—At the
25 request of a project proponent, the lead agency, cooperating

1 agencies and any other agencies involved with the mineral
2 exploration or mine permitting process shall enter into an
3 agreement with the project proponent that sets time limits
4 for each part of the permitting process including the fol-
5 lowing:

6 (1) The decision on whether to prepare a docu-
7 ment required under the National Environmental
8 Policy Act of 1969.

9 (2) A determination of the scope of any docu-
10 ment required under the National Environmental
11 Policy Act of 1969.

12 (3) The scope of and schedule for the baseline
13 studies required to prepare a document required
14 under the National Environmental Policy Act of
15 1969.

16 (4) Preparation of any draft document required
17 under the National Environmental Policy Act of
18 1969.

19 (5) Preparation of a final document required
20 under the National Environmental Policy Act of
21 1969.

22 (6) Consultations required under applicable
23 laws.

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

1 (8) *Publication of any public notices required*
2 *under applicable law.*

3 (9) *A final or any interim decisions.*

4 (e) *TIME LIMIT FOR PERMITTING PROCESS.—In no*
5 *case should the total review process described in subsection*
6 *(d) exceed 30 months unless agreed to by the signatories*
7 *of the agreement.*

8 (f) *LIMITATION ON ADDRESSING PUBLIC COM-*
9 *MENTS.—The lead agency is not required to address agency*
10 *or public comments that were not submitted during any*
11 *public comment periods or consultation periods provided*
12 *during the permitting process or as otherwise required by*
13 *law.*

14 (g) *FINANCIAL ASSURANCE.—The lead agency will de-*
15 *termine the amount of financial assurance for reclamation*
16 *of a mineral exploration or mining site, which must cover*
17 *the estimated cost if the lead agency were to contract with*
18 *a third party to reclaim the operations according to the*
19 *reclamation plan, including construction and maintenance*
20 *costs for any treatment facilities necessary to meet Federal,*
21 *State or tribal environmental standards.*

22 (h) *APPLICATION TO EXISTING PERMIT APPLICA-*
23 *TIONS.—This section shall apply with respect to a mineral*
24 *exploration or mine permit for which an application was*
25 *submitted before the date of the enactment of this Act if*

1 *the applicant for the permit submits a written request to*
2 *the lead agency for the permit. The lead agency shall begin*
3 *implementing this section with respect to such application*
4 *within 30 days after receiving such written request.*

5 *(i) STRATEGIC AND CRITICAL MINERALS WITHIN NA-*
6 *TIONAL FORESTS.—With respect to strategic and critical*
7 *minerals within a federally administered unit of the Na-*
8 *tional Forest System, the lead agency shall—*

9 *(1) exempt all areas of identified mineral re-*
10 *sources in Land Use Designations, other than Non-*
11 *Development Land Use Designations, in existence as*
12 *of the date of the enactment of this Act from the pro-*
13 *cedures detailed at and all rules promulgated under*
14 *part 294 of title 36, Code for Federal Regulations;*

15 *(2) apply such exemption to all additional routes*
16 *and areas that the lead agency finds necessary to fa-*
17 *cilitate the construction, operation, maintenance, and*
18 *restoration of the areas of identified mineral resources*
19 *described in paragraph (1); and*

20 *(3) continue to apply such exemptions after ap-*
21 *proval of the Minerals Plan of Operations for the unit*
22 *of the National Forest System.*

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

24 *In evaluating and issuing any mineral exploration or*
25 *mine permit, the priority of the lead agency shall be to*

1 *maximize the development of the mineral resource, while*
2 *mitigating environmental impacts, so that more of the min-*
3 *eral resource can be brought to the market place.*

4 **SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EX-**
5 **PLORATION AND MINING PROJECTS.**

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

18 (b) *DEPARTMENTAL REVIEW OF FEDERAL REGISTER*
19 *NOTICES FOR MINERAL EXPLORATION AND MINING*
20 *PROJECTS.—Absent any extraordinary circumstance or ex-*
21 *cept as otherwise required by any Act of Congress, each Fed-*
22 *eral Register notice described in subsection (a) shall under-*
23 *go any required reviews within the Department of the Inte-*
24 *rior or the Department of Agriculture and be published in*

1 *its final form in the Federal Register no later than 30 days*
2 *after its initial preparation.*

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

7 **SEC. 201. DEFINITIONS FOR TITLE.**

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

13 **SEC. 202. TIMELY FILINGS.**

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

17 **SEC. 203. RIGHT TO INTERVENE.**

18 *The holder of any mineral exploration or mine permit*
19 *may intervene as of right in any covered civil action by*
20 *a person affecting rights or obligations of the permit holder*
21 *under the permit.*

22 **SEC. 204. EXPEDITION IN HEARING AND DETERMINING THE**
23 **ACTION.**

24 *The court shall endeavor to hear and determine any*
25 *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 or*
3 *approve any prospective relief unless the court finds that*
4 *such relief is narrowly drawn, extends no further than nec-*
5 *essary to correct the violation of a legal requirement, and*
6 *is the least intrusive means necessary to correct that viola-*
7 *tion.*

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*
13 *action receive payment from the Federal Government for*
14 *their attorneys' fees, expenses, and other court costs.*

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