

112TH CONGRESS
2^D SESSION

H. R. 4402

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

APRIL 19, 2012

Mr. AMODEI 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Strategic and
5 Critical Minerals Production Act of 2012”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

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

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

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

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

22 (A) Twenty-five years ago the United
23 States was dependent on foreign sources for 30
24 nonfuel mineral materials, 6 of which the
25 United States imported 100 percent of the Na-
26 tion's requirements, and for another 16 com-

1 commodities the United States imported more than
2 60 percent of the Nation's needs.

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

10 (C) The United States share of world wide
11 mineral exploration dollars was 8 percent in
12 2011, down from 19 percent in the early 1990s.

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

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

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

24 (A) for national defense and national secu-
25 rity requirements;

1 (B) for the Nation’s energy infrastructure,
2 including pipelines, refining capacity, electrical
3 power generation and transmission, and renew-
4 able energy production;

5 (C) to support domestic manufacturing,
6 agriculture, housing, telecommunications,
7 healthcare, and transportation infrastructure;
8 and

9 (D) for the Nation’s economic security and
10 balance of trade.

11 (2) AGENCY.—The term “agency” means any
12 agency, department, or other unit of Federal, State,
13 local, or tribal government, or Alaska Native Cor-
14 poration.

15 (3) MINERAL EXPLORATION OR MINE PER-
16 MIT.—The term “mineral exploration or mine per-
17 mit” includes plans of operation issued by the Bu-
18 reau of Land Management and the Forest Service
19 pursuant to 43 CFR 3809 and 36 CFR 228A re-
20 spectively.

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) The lead agency with responsibility for issuing a
22 mineral exploration or mine permit may determine any
23 such action would not constitute a major Federal action
24 significantly affecting the quality of the human environ-
25 ment within the meaning of the National Environmental

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

7 (c) The lead agency with responsibility for issuing a
8 mineral exploration or mine permit shall enhance govern-
9 ment coordination on permitting and review by avoiding
10 duplicative reviews, minimizing paperwork and engaging
11 other agencies and stakeholders early in the process. The
12 lead agency shall consider the following best practices:

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

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

20 (d) At the request of a project proponent, the project
21 lead of the agency with responsibility for issuing a mineral
22 exploration or mine permit shall enter into an agreement
23 with the project proponent and other cooperating agencies
24 that sets time limits for each part of the permit review
25 process including:

1 (1) The decision on whether to prepare an envi-
2 ronmental impact statement.

3 (2) A determination of the scope of any envi-
4 ronmental impact statement.

5 (3) Preparation of any draft environmental im-
6 pact statement.

7 (4) Preparation of a final environmental impact
8 statement.

9 (5) Consultations required under applicable
10 laws.

11 (6) Submission and review of any comments re-
12 quired under applicable law.

13 (7) Publication of any public notices required
14 under applicable law.

15 (8) A final or any interim decisions.

16 (e) In no case should the total review process de-
17 scribed in section 2(d) exceed 30 months unless agreed
18 to by the signatories of the agreement.

19 (f) The lead agency is not required to address agency
20 or public comments that were not submitted during the
21 public comment periods provided by the lead agency or
22 otherwise required by law.

23 (g) The lead agency will determine the amount of fi-
24 nancial assurance for reclamation of a mining site, which
25 must cover the estimated cost if the lead agency were to

1 contract with a third party to reclaim the operations ac-
2 cording to the reclamation plan, including construction
3 and maintenance costs for any treatment facilities nec-
4 essary to meet Federal, State or tribal environmental
5 standards.

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

7 In developing the mineral exploration or mine permit,
8 the priority of the lead agency shall be to maximize the
9 development of the mineral resource, while mitigating en-
10 vironmental impacts, so that more of the mineral resource
11 can be brought to the market place.

12 **SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EX-**
13 **PLORATION AND MINING PROJECTS.**

14 (a) PREPARATION OF FEDERAL NOTICES FOR MIN-
15 ERAL EXPLORATION AND MINE DEVELOPMENT
16 PROJECTS.—The preparation of Federal Register notices
17 required by law associated with the issuance of a mineral
18 exploration or mine permit shall be delegated to the orga-
19 nization level within the agency responsible for issuing the
20 mineral exploration or mine permit. All Federal Register
21 notices regarding official document availability, announce-
22 ments of meetings, or notices of intent to undertake an
23 action shall be originated and transmitted to the Federal
24 Register from the office where documents are held, meet-
25 ings are held, or the activity is initiated.

1 (b) DEPARTMENTAL REVIEW OF FEDERAL REG-
2 ISTER NOTICES FOR MINERAL EXPLORATION AND MIN-
3 ING PROJECTS.—Absent any extraordinary circumstance
4 or except as otherwise required by any Act of Congress,
5 each Federal Register notice described in subsection (a)
6 shall undergo any required reviews within the Department
7 of the Interior or the Department of Agriculture and be
8 published in its final form in the Federal Register no later
9 than 30 days after its initial preparation.

10 **TITLE II—JUDICIAL REVIEW OF**
11 **AGENCY ACTIONS RELATING**
12 **TO EXPLORATION AND MINE**
13 **PERMITS**

14 **SEC. 201. DEFINITIONS FOR TITLE.**

15 In this title the term “covered civil action” means a
16 civil action containing a claim under section 702 of title
17 5, United States Code, regarding agency action affecting
18 a mineral exploration or mine permit.

19 **SEC. 202. TIMELY FILINGS.**

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

1 **SEC. 203. EXPEDITION IN HEARING AND DETERMINING THE**
2 **ACTION.**

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

5 **SEC. 204. LIMITATION ON PROSPECTIVE RELIEF.**

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

12 **SEC. 205. LIMITATION ON ATTORNEYS' FEES.**

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

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