

115TH CONGRESS
1ST SESSION

S. 145

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 the economic and national security and manufacturing competitiveness of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 12, 2017

Mr. HELLER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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 the economic and national security and manufacturing competitiveness of the United States, and for other purposes.

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”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the industrialization of developing nations
4 has driven demand for nonfuel minerals necessary
5 for telecommunications, military technologies,
6 healthcare technologies, and conventional and renew-
7 able energy technologies;

8 (2) the availability of minerals and mineral ma-
9 terials are essential for economic growth, national
10 security, technological innovation, and the manufac-
11 turing and agricultural supply chain;

12 (3) minerals and mineral materials are critical
13 components of every transportation, water, tele-
14 communications, and energy infrastructure project
15 necessary to modernize the crumbling infrastructure
16 of the United States;

17 (4) the exploration, production, processing, use,
18 and recycling of minerals contribute significantly to
19 the economic well-being, security, and general wel-
20 fare of the United States;

21 (5) the United States has vast mineral re-
22 sources but is becoming increasingly dependent on
23 foreign sources of mineral resources, as dem-
24 onstrated by the fact that—

1 (A) 25 years ago, the United States was
2 dependent on foreign sources for 45 nonfuel
3 mineral materials, of which—

4 (i) 8 were imported by the United
5 States to fulfill 100 percent of the require-
6 ments of the United States for those
7 nonfuel mineral materials; and

8 (ii) 19 were imported by the United
9 States to fulfill greater than 50 percent of
10 the requirements of the United States for
11 those nonfuel mineral materials;

12 (B) by 2015 the import dependence of the
13 United States for nonfuel mineral materials in-
14 creased from dependence on the import of 45
15 nonfuel mineral materials to dependence on the
16 import of 47 nonfuel mineral materials, of
17 which—

18 (i) 19 were imported by the United
19 States to fulfill 100 percent of the require-
20 ments of the United States for those
21 nonfuel mineral materials; and

22 (ii) 22 were imported by the United
23 States to fulfill greater than 50 percent of
24 the requirements of the United States for
25 those nonfuel mineral materials;

1 (C) according to the Department of En-
2 ergy, the United States imports greater than 50
3 percent of the 41 metals and minerals key to
4 clean energy applications;

5 (D) the United States share of worldwide
6 mineral exploration dollars was 7 percent in
7 2015, down from 19 percent in the early 1990s;

8 (E) the 2014 Ranking of Countries for
9 Mining Investment, which ranks 25 major min-
10 ing countries, found that 7- to 10-year permit-
11 ting delays are the most significant risk to min-
12 ing projects in the United States; and

13 (F) in late 2016, the Government Account-
14 ability Office found that—

15 (i) “the Federal government’s ap-
16 proach to addressing critical materials sup-
17 ply issues has not been consistent with se-
18 lected key practices for interagency col-
19 laboration, such as ensuring that agencies’
20 roles and responsibilities are clearly de-
21 fined”; and

22 (ii) “the Federal critical materials ap-
23 proach faces other limitations, including
24 data limitations and a focus on only a sub-
25 set of critical materials, a limited focus on

1 domestic production of critical materials,
2 and limited engagement with industry”.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) AGENCY.—The term “agency” means—

6 (A) any agency, department, or other unit
7 of Federal, State, local, or tribal government; or

8 (B) an Alaska Native Corporation.

9 (2) ALASKA NATIVE CORPORATION.—The term
10 “Alaska Native Corporation” has the meaning given
11 the term “Native Corporation” in section 3 of the
12 Alaska Native Claims Settlement Act (43 U.S.C.
13 1602).

14 (3) LEAD AGENCY.—The term “lead agency”
15 means the agency with primary responsibility for
16 issuing a mineral exploration or mine permit for a
17 project.

18 (4) MINERAL EXPLORATION OR MINE PER-
19 MIT.—The term “mineral exploration or mine per-
20 mit” includes—

21 (A) an authorization of the Bureau of
22 Land Management or the Forest Service, as ap-
23 plicable, for premining activities that requires
24 an environmental impact statement or similar

analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) a plan of operations issued by—

(i) the Bureau of Land Management under subpart 3809 of part 3800 of title 43, Code of Federal Regulations (or successor regulations); or

(ii) the Forest Service under subpart A of part 228 of title 36, Code of Federal Regulations (or successor regulations); and

(C) a permit issued under an authority described in section 3503.13 of title 43, Code of Federal regulations (or successor regulations).

(5) PROJECT.—The term “project” means a project for which the issuance of a permit is required to conduct activities for, relating to, or incidental to mineral exploration, mining, beneficiation, processing, or reclamation activities—

(A) on a mining claim, millsite claim, or tunnel site claim for any locatable mineral; or

(B) in conjunction with any Federal mineral (other than coal and oil shale) that is leased under—

(i) the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.); or

1 (ii) section 402 of Reorganization
 2 Plan Numbered 3 of 1946 (5 U.S.C.
 3 App.).

4 **SEC. 4. IMPROVING DEVELOPMENT OF STRATEGIC AND**
 5 **CRITICAL MINERALS.**

6 (a) DEFINITION OF STRATEGIC AND CRITICAL MIN-
 7 ERALS.—In this section, the term “strategic and critical
 8 minerals” means minerals that are necessary—

9 (1) for the national defense and national secu-
 10 rity requirements;

11 (2) for the energy infrastructure of the United
 12 States, including—

13 (A) pipelines;

14 (B) refining capacity;

15 (C) electrical power generation and trans-
 16 mission; and

17 (D) renewable energy production;

18 (3) to support domestic manufacturing, agri-
 19 culture, housing, telecommunications, healthcare,
 20 and transportation infrastructure; or

21 (4) for the economic security of, and balance of
 22 trade in, the United States.

23 (b) CONSIDERATION OF CERTAIN DOMESTIC MINES
 24 AS INFRASTRUCTURE PROJECTS.—A domestic mine that,
 25 as determined by the lead agency, will provide strategic

1 and critical minerals shall be considered to be an infra-
2 structure project, as described in Executive Order 13604
3 (5 U.S.C. 601 note; relating to improving performance of
4 Federal permitting and review of infrastructure projects).

5 **SEC. 5. RESPONSIBILITIES OF THE LEAD AGENCY.**

6 (a) IN GENERAL.—The lead agency shall appoint a
7 project lead within the lead agency, who shall coordinate
8 and consult with cooperating agencies and any other agen-
9 cies involved in the permitting process, project proponents,
10 and contractors to ensure that cooperating agencies and
11 other agencies involved in the permitting process, project
12 proponents, and contractors—

- 13 (1) minimize delays;
14 (2) set and adhere to timelines and schedules
15 for completion of the permitting process;
16 (3) set clear permitting goals; and
17 (4) track progress against those goals.

18 (b) DETERMINATION UNDER NEPA.—

19 (1) IN GENERAL.—To the extent that the Na-
20 tional Environmental Policy Act of 1969 (42 U.S.C.
21 4321 et seq.) applies to the issuance of any mineral
22 exploration or mine permit, the requirements of that
23 Act shall be considered to have been procedurally
24 and substantively satisfied if the lead agency deter-
25 mines that any State or Federal agency acting under

1 State or Federal law has addressed or will address
2 the following factors:

3 (A) The environmental impact of the ac-
4 tion to be conducted under the permit.

5 (B) Possible adverse environmental effects
6 of actions under the permit.

7 (C) Possible alternatives to issuance of the
8 permit.

9 (D) The relationship between long- and
10 short-term uses of the local environment and
11 the maintenance and enhancement of long-term
12 productivity.

13 (E) Any irreversible and irretrievable com-
14 mitment of resources that would be involved in
15 the proposed action.

16 (F) Whether public participation will occur
17 during the decisionmaking process for author-
18 izing actions under the permit.

19 (2) WRITTEN REQUIREMENT.—In making a de-
20 termination under paragraph (1), not later than 90
21 days after receipt of an application for the permit,
22 the lead agency, in a written record of decision,
23 shall—

24 (A) explain the rationale used in reaching
25 the determination;

1 (B) state the facts in the record that are
 2 the basis for the determination; and

3 (C) show that the facts in the record could
 4 allow a reasonable person to reach the same de-
 5 termination as the lead agency did.

6 (c) COORDINATION ON PERMITTING PROCESS.—

7 (1) IN GENERAL.—The lead agency shall en-
 8 hance government coordination for the permitting
 9 process by—

10 (A) avoiding duplicative reviews;

11 (B) minimizing paperwork; and

12 (C) engaging other agencies and stake-
 13 holders early in the process.

14 (2) CONSIDERATIONS.—In carrying out para-
 15 graph (1), the lead agency shall consider—

16 (A) deferring to, and relying on, baseline
 17 data, analyses, and reviews performed by State
 18 agencies with jurisdiction over the proposed
 19 project; and

20 (B) to the maximum extent practicable,
 21 conducting any consultations or reviews concu-
 22 rently rather than sequentially if the concurrent
 23 consultation or review would expedite the proc-
 24 ess.

1 (3) MEMORANDUM OF AGENCY AGREEMENT.—

2 If requested at any time by a State or local planning
 3 agency, the lead agency, in consultation with other
 4 Federal agencies with relevant jurisdiction in the en-
 5 vironmental review process, may establish memo-
 6 randa of agreement with the project sponsor, State
 7 and local governments, and other appropriate enti-
 8 ties to accomplish the coordination activities de-
 9 scribed in this subsection.

10 (d) SCHEDULE FOR PERMITTING PROCESS.—

11 (1) IN GENERAL.—For any project for which
 12 the lead agency cannot make the determination de-
 13 scribed subsection (b), at the request of a project
 14 proponent, the lead agency, cooperating agencies,
 15 and any other agencies involved with the mineral ex-
 16 ploration or mine permitting process shall enter into
 17 an agreement with the project proponent that sets
 18 time limits for each part of the permitting process,
 19 including—

20 (A) the decision on whether to prepare an
 21 environmental impact statement or similar anal-
 22 ysis required under the National Environmental
 23 Policy Act of 1969 (42 U.S.C. 4321 et seq.);

24 (B) a determination of the scope of any en-
 25 vironmental impact statement or similar anal-

1 ysis required under the National Environmental
2 Policy Act of 1969 (42 U.S.C. 4321 et seq.);

3 (C) the scope of, and schedule for, the
4 baseline studies required to prepare an environ-
5 mental impact statement or similar analysis re-
6 quired under the National Environmental Pol-
7 icy Act of 1969 (42 U.S.C. 4321 et seq.);

8 (D) preparation of any draft environmental
9 impact statement or similar analysis required
10 under the National Environmental Policy Act of
11 1969 (42 U.S.C. 4321 et seq.);

12 (E) preparation of a final environmental
13 impact statement or similar analysis required
14 under the National Environmental Policy Act of
15 1969 (42 U.S.C. 4321 et seq.);

16 (F) any consultations required under appli-
17 cable law;

18 (G) submission and review of any com-
19 ments required under applicable law;

20 (H) publication of any public notices re-
21 quired under applicable law; and

22 (I) any final or interim decisions.

23 (2) TIME LIMIT FOR PERMITTING PROCESS.—

24 Except if extended by mutual agreement of the
25 project proponent and the lead agency, the time pe-

1 riod for the total review process described in para-
2 graph (1) shall not exceed 30 months.

3 (e) LIMITATION ON ADDRESSING PUBLIC COM-
4 MENTS.—The lead agency shall not be required to address
5 any agency or public comments that were not submitted—

6 (1) during a public comment period or consulta-
7 tion period provided during the permitting process;
8 or

9 (2) as otherwise required by law.

10 (f) FINANCIAL ASSURANCE.—The lead agency shall
11 determine the amount of financial assurance required for
12 reclamation of a mineral exploration or mining site, on the
13 condition that the financial assurance shall cover the esti-
14 mated cost if the lead agency were to contract with a third
15 party to reclaim the operations according to the reclama-
16 tion plan, including construction and maintenance costs
17 for any treatment facilities necessary to meet Federal,
18 State, or tribal environmental standards.

19 (g) PROJECTS WITHIN NATIONAL FORESTS.—With
20 respect to projects on National Forest System land, the
21 lead agency shall—

22 (1) exempt from the requirements of part 294
23 of title 36, Code of Federal Regulations (or suc-
24 cessor regulations)—

1 (A) all areas of identified mineral re-
 2 sources in land use designations, other than
 3 nondevelopment land use designations, in exist-
 4 ence on the date of enactment of this Act; and

5 (B) all additional routes and areas that the
 6 lead agency determines necessary to facilitate
 7 the construction, operation, maintenance, and
 8 restoration of an area described in paragraph
 9 (1); and

10 (2) continue to apply the exemptions described
 11 in paragraph (1) after the date on which approval
 12 of the minerals plan of operations described in sec-
 13 tion 3(4)(B)(ii) for the National Forest System land.

14 (h) APPLICATION TO EXISTING PERMIT APPLICA-
 15 TIONS.—

16 (1) IN GENERAL.—This section applies to a
 17 mineral exploration or mine permit for which an ap-
 18 plication was submitted before the date of enactment
 19 of this Act if the applicant for the permit submits
 20 a written request to the lead agency for the permit.

21 (2) IMPLEMENTATION.—The lead agency shall
 22 begin implementing this section with respect to an
 23 application described in paragraph (1) not later than
 24 30 days after the date on which the lead agency re-
 25 ceives the written request for the permit.

1 **SEC. 6. FEDERAL REGISTER PROCESS FOR MINERAL EX-**
2 **PLORATION AND MINING PROJECTS.**

3 (a) DEPARTMENTAL REVIEW.—Absent any extraor-
4 dinary circumstances, as determined by the Secretary of
5 the Interior or the Secretary of Agriculture, as applicable,
6 and except as otherwise required by law, the Secretary of
7 the Interior or the Secretary of Agriculture, as applicable,
8 shall ensure that each Federal Register notice associated
9 with the issuance of a mineral exploration or mine permit
10 and required by law shall be—

11 (1) subject to any required reviews within the
12 Department of the Interior or the Department of
13 Agriculture, as applicable; and

14 (2) published in final form in the Federal Reg-
15 ister not later than 45 days after the date of initial
16 preparation of the notice.

17 (b) PREPARATION.—The preparation of any Federal
18 Register notice described in subsection (a) shall be dele-
19 gated to the organizational level within the lead agency.

20 (c) TRANSMISSION.—All Federal Register notices de-
21 scribed in subsection (a) regarding official document avail-
22 ability, announcements of meetings, or notices of intent
23 to undertake an action shall originate in, and be trans-
24 mitted to the Federal Register from, the office in which,
25 as applicable—

26 (1) the documents or meetings are held; or

1 (2) the activity is initiated.

2 **SEC. 7. SECRETARIAL ORDER NOT AFFECTED.**

3 This Act shall not apply to any mineral described in
4 Secretarial Order 3324, issued by the Secretary of the In-
5 terior on December 3, 2012, in any area to which the
6 order applies.

