To amend the Internal Revenue Code of 1986 to permanently allow a tax deduction at the time an investment is made in property used to extract critical minerals and metals from the United States, to modify the prohibition on the acquisition of certain sensitive materials from non-allied foreign nations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2020

Mr. CRUZ introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to permanently allow a tax deduction at the time an investment is made in property used to extract critical minerals and metals from the United States, to modify the prohibition on the acquisition of certain sensitive materials from non-allied foreign nations, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Onshoring Rare Earths Act of 2020” or the “ORE Act”.

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SEC. 2. PERMANENT FULL EXPENSING FOR PROPERTY USED TO EXTRACT CRITICAL MINERALS AND METALS WITHIN THE UNITED STATES.

(a) In General.—Section 168(k) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(11) SPECIAL RULE FOR PROPERTY USED IN THE EXTRACTION OF CRITICAL MINERALS AND METALS WITHIN THE UNITED STATES.—

“(A) In general.—In the case of any qualified property which is directly involved in extracting critical minerals and metals from deposits in the United States—

“(i) paragraph (2)(A)(iii) shall not apply, and

“(ii) the applicable percentage shall be 100 percent.

“(B) CRITICAL MINERALS AND METALS.—For purposes of this paragraph, the term ‘critical minerals and metals’ means cerium, cobalt, dysprosium, erbium, europium, gadolinium, graphite, holmium, lanthanum, lithium, lutetium, manganese, neodymium, praseodymium, promethium, samarium, scandium, terbium, thulium, ytterbium, and yttrium.”.
(b) Effective Date.—The amendment made by this section shall apply to property placed in service after December 31, 2019.

SEC. 3. PERMANENT FULL EXPENSING FOR NONRESIDENTIAL REAL PROPERTY USED IN THE EXTRACTION OF CRITICAL MINERALS AND METALS WITHIN THE UNITED STATES.

(a) In General.—Section 168 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(n) Special Allowance for Nonresidential Real Property Used in the Extraction of Critical Minerals and Metals Within the United States.—

“(1) New structures.—In the case of any qualified real property—

“(A)(i) if such property is placed in service on or after the date of enactment of this subsection, the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 100 percent of the adjusted basis of such property, or

“(ii) if such property was placed in service before the date of enactment of this subsection, the depreciation deduction provided by section

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167(a) for the first taxable year beginning after such date shall include an allowance equal to 100 percent of the adjusted basis of such property, and

“(B) the adjusted basis of such property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

“(2) QUALIFIED REAL PROPERTY.—For purposes of this subsection, the term ‘qualified real property’ means any nonresidential real property which is directly involved in extracting critical minerals and metals (as defined in subsection (k)(11)(B)) from deposits in the United States.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2019.

SEC. 4. DEDUCTION FOR PURCHASE OF CRITICAL MINERALS AND METALS EXTRACTED WITHIN THE UNITED STATES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 176 the following new section:
“SEC. 177. DEDUCTION FOR PURCHASE OF CRITICAL MINERALS AND METALS EXTRACTED WITHIN THE UNITED STATES.

“(a) ALLOWANCE OF DEDUCTION.—There shall be allowed as a deduction for the taxable year an amount equal to 200 percent of the cost paid or incurred by the taxpayer for the purchase or acquisition of critical minerals and metals (as defined in section 168(k)(11)(B)) which have been extracted from deposits in the United States.

“(b) APPLICATION WITH OTHER DEDUCTIONS.—No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.”.

(b) CONFORMING AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 176 the following new item:

“Sec. 177. Deduction for purchase of critical minerals and metals extracted within the United States.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2019.
SEC. 5. MODIFICATION OF PROHIBITION ON ACQUISITION
OF CERTAIN SENSITIVE MATERIALS.

(a) Extension of Prohibition to Mined, Refined, and Separated Materials.—Subsection (a)(1) of section 2533c of title 10, United States Code, is amended by striking “melted or produced” and inserting “mined, refined, separated, melted, or produced”.

(b) Commercially Available Off-the-Shelf Item Exception.—Subsection (c)(3)(A)(i) of such section is amended by striking “50 percent or more tungsten” and inserting “50 percent or more covered material”.

SEC. 6. GRANT PROGRAM FOR DEVELOPMENT OF CRITICAL MINERALS AND METALS.

(a) Establishment.—The Secretary of Defense, in consultation with the Secretary of the Interior, shall establish a grant program to finance pilot projects for the development of critical minerals and metals in the United States.

(b) Limitation on Grant Awards.—A grant awarded under subsection (a) may not exceed $10,000,000.

(c) Economic Viability.—In awarding grants under subsection (a), the Secretary of Defense shall give priority to projects the Secretary determines are likely to be economically viable over the long term.
(d) Secondary Recovery.—In awarding grants under subsection (a) during a fiscal year, the Secretary of Defense shall seek to award not less than 30 percent of the total amount of grants awarded during that fiscal year for projects relating to secondary recovery of critical minerals and metals.

(e) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of Defense $50,000,000 for each of fiscal years 2021 through 2024 to carry out the grant program established under subsection (a).

(f) Definitions.—In this section:

(1) Critical minerals and metals.—The term “critical minerals and metals” means cerium, cobalt, dysprosium, erbium, europium, gadolinium, graphite, holmium, lanthanum, lithium, lutetium, manganese, neodymium, praseodymium, promethium, samarium, scandium, terbium, thulium, ytterbium, and yttrium.

(2) Secondary recovery.—The term “secondary recovery” means the recovery of minerals and metals from discarded end-use products or from waste products produced during the metal refining and manufacturing process, including from mine waste piles, acidmine drainage sludge, or byprod-
acts produced through legacy mining and metallurgy activities.