

117TH CONGRESS
1ST SESSION

H. R. 2604

To improve the permitting process for critical mineral projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2021

Mr. STAUBER (for himself, Mr. NEWHOUSE, Mr. WESTERMAN, Mrs. CAMMACK, Ms. TENNEY, Mr. LAMALFA, Mr. MCKINLEY, Mr. GROTHMAN, Mr. EMMER, Mrs. MILLER of Illinois, Mr. ROSENDALE, Mr. STEWART, Mr. BAIRD, and Mr. TIFFANY) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Small Business, 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 improve the permitting process for critical mineral projects, 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 “Accessing America’s
5 Critical Minerals Act of 2021”.

1 **SEC. 2. PERMITTING.**

2 (a) SENSE OF CONGRESS.—It is the sense of Con-
3 gress that—

4 (1) critical minerals are fundamental to the
5 economy, competitiveness, and security of the United
6 States;

7 (2) to the maximum extent practicable, the crit-
8 ical mineral needs of the United States should be
9 satisfied by minerals, elements, substances, and ma-
10 terials responsibly produced and recycled in the
11 United States; and

12 (3) the current Federal permitting process is an
13 impediment to mineral production and the mineral
14 security of the United States.

15 (b) COORDINATION ON PERMITTING PROCESS.—

16 (1) IN GENERAL.—The Secretary, in consulta-
17 tion with appropriate Federal agencies, shall, to the
18 maximum extent practicable, with respect to the
19 Federal permitting and review process for critical
20 mineral projects on Federal land—

21 (A) establish and adhere to timelines and
22 schedules for the consideration of, and final de-
23 cisions regarding, applications, operating plans,
24 leases, licenses, permits, and other use author-
25 izations for mineral-related activities on Federal
26 land;

1 (B) establish clear, quantifiable, and tem-
2 poral permitting performance goals and track-
3 ing progress against those goals;

4 (C) engage in early collaboration among
5 agencies, project sponsors, and affected stake-
6 holders—

7 (i) to incorporate and address the in-
8 terests of each such agency, sponsor, and
9 stakeholder; and

10 (ii) to minimize delays;

11 (D) ensure transparency and accountability
12 by using cost-effective information technology to
13 collect and disseminate information regarding
14 individual critical mineral projects and agency
15 performance;

16 (E) engage in early and active consultation
17 with State and local governments and Indian
18 Tribes to avoid conflicts or duplication of effort,
19 resolve concerns, and allow for concurrent,
20 rather than sequential, State, local, Tribal, and
21 Federal environmental and regulatory reviews;

22 (F) meet or exceed the performance
23 metrics contained in subsection (g);

1 (G) expand and institutionalize permitting
2 and review process improvements that have
3 proven effective;

4 (H) develop mechanisms to better commu-
5 nicate priorities and resolve disputes among
6 agencies at the national, regional, State, and
7 local levels; and

8 (I) develop other practices to improve the
9 regulatory processes, such as preapplication
10 procedures.

11 (2) CONSIDERATIONS.—In carrying out para-
12 graph (1), the lead agency shall consider deferring
13 to, and relying on, baseline data, analyses, and re-
14 views performed by State agencies with jurisdiction
15 over the proposed critical mineral project.

16 (3) MEMORANDUM OF AGREEMENT.—The lead
17 agency with respect to a critical mineral project on
18 Federal land, in consultation with any other Federal
19 agency with jurisdiction over such project, shall,
20 upon request of the project sponsor, a State or local
21 government, an Indian Tribe, or other entity such
22 lead agency determines appropriate, establish a
23 memorandum of agreement with the project sponsor,
24 a State or local government, an Indian Tribe, or an-
25 other entity such lead agency determines appropriate

1 to carry out the activities described in this sub-
2 section.

3 (4) TIME LIMIT FOR PERMITTING PROCESS.—

4 Notwithstanding any other provision of law, and ex-
5 cept with agreement of the project sponsor, the total
6 period for all necessary Federal reviews and permit
7 consideration for a critical mineral project on Fed-
8 eral land reasonably expected to produce critical
9 minerals may not exceed—

10 (A) with respect to a project that requires
11 an environmental assessment under section
12 102(2)(C) of the National Environmental Policy
13 Act of 1969 (42 U.S.C. 4331(2)(C)), 18
14 months; or

15 (B) with respect to a project that requires
16 an environmental impact statement under such
17 section, 24 months.

18 (c) DETERMINATION UNDER NATIONAL ENVIRON-
19 MENTAL POLICY ACT.—

20 (1) IN GENERAL.—To the extent that the Na-
21 tional Environmental Policy Act of 1969 (42 U.S.C.
22 4321 et seq.) applies to the issuance of any mineral
23 exploration or mine permit relating to a critical min-
24 eral project, the lead agency may deem the require-
25 ments of such Act satisfied if the lead agency deter-

1 mines that a State or Federal agency acting under
2 State or Federal law has addressed the following
3 factors:

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

6 (B) Possible alternatives to issuance of the
7 permit.

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

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

15 (2) PUBLICATION.—The lead agency shall pub-
16 lish a determination under paragraph (1) not later
17 than 90 days after receipt of an application for the
18 permit.

19 (3) VERIFICATION.—The lead agency shall pub-
20 lish a determination that the factors under para-
21 graph (1) have been sufficiently addressed and pub-
22 lic participation has occurred with regard to any au-
23 thorizing actions before issuing any mineral explo-
24 ration or mine permit for a critical mineral project.

1 (d) SCHEDULE FOR PERMITTING PROCESS.—For
2 any critical mineral project for which the lead agency can-
3 not make the determination described in subsection (c),
4 at the request of a project sponsor, the lead agency, co-
5 operating agencies, and any other agencies involved with
6 the mineral exploration or mine permitting process shall
7 enter into an agreement with the project sponsor that sets
8 time limits for each part of the permitting process, includ-
9 ing—

10 (1) the decision on whether to prepare an envi-
11 ronmental impact statement or similar analysis re-
12 quired under the National Environmental Policy Act
13 of 1969 (42 U.S.C. 4321 et seq.);

14 (2) a determination of the scope of any environ-
15 mental impact statement or similar analysis required
16 under such Act;

17 (3) the scope of, and schedule for, the baseline
18 studies required to prepare an environmental impact
19 statement or similar analysis required under such
20 Act;

21 (4) preparation of any draft environmental im-
22 pact statement or similar analysis required under
23 such Act;

1 (5) preparation of a final environmental impact
2 statement or similar analysis required under such
3 Act;

4 (6) any consultations required under applicable
5 law;

6 (7) submission and review of any comments re-
7 quired under applicable law;

8 (8) publication of any public notices required
9 under applicable law; and

10 (9) any final or interim decisions.

11 (e) ADDRESSING PUBLIC COMMENTS.—As part of
12 the review process of a critical mineral project under the
13 National Environmental Policy Act of 1969 (42 U.S.C.
14 4321 et seq.), the lead agency may not address any agency
15 or public comments that were not submitted—

16 (1) during a public comment period or consulta-
17 tion period provided during the permitting process;
18 or

19 (2) as otherwise required by law.

20 (f) REVIEW AND REPORT.—Not later than 1 year
21 after the date of enactment of this Act, the Secretary and
22 the Secretary of Agriculture shall submit to Congress a
23 report that—

24 (1) identifies additional measures (including
25 regulatory and legislative proposals, as appropriate)

1 that would increase the timeliness of permitting ac-
2 tivities for the exploration and development of do-
3 mestic critical minerals;

4 (2) identifies options (including cost recovery
5 paid by permit applicants, as appropriate) for ensur-
6 ing adequate staffing and training of Federal enti-
7 ties and personnel responsible for the consideration
8 of applications, operating plans, leases, licenses, per-
9 mits, and other use authorizations for critical min-
10 eral projects on Federal land;

11 (3) quantifies the amount of time typically re-
12 quired (including a range derived from minimum
13 and maximum durations, mean, median, variance,
14 and any other statistical measure or representation
15 the Secretary and the Secretary of Agriculture de-
16 termine appropriate) to complete each step (includ-
17 ing those aspects outside the control of the executive
18 branch, such as judicial review, applicant decisions,
19 or State and local government involvement) associ-
20 ated with the development and processing of applica-
21 tions, operating plans, leases, licenses, permits, and
22 other use authorizations for a mineral exploration or
23 mine permit for a critical mineral project; and

24 (4) describes actions carried out pursuant to
25 subsection (b).

1 (g) PERFORMANCE METRIC.—Not later than 90 days
2 after the date of submission of the report under subsection
3 (e), the Secretary and the Secretary of Agriculture, after
4 providing public notice and an opportunity to comment,
5 shall develop and publish a performance metric for evalu-
6 ating the progress made by the executive branch to expe-
7 dite the permitting of critical mineral projects.

8 (h) ANNUAL REPORTS.—Beginning with the first
9 budget submission by the President under section 1105
10 of title 31, United States Code, after publication of the
11 performance metric required under subsection (f), and an-
12 nually thereafter, the Secretary and the Secretary of Agri-
13 culture shall jointly submit to Congress a report that—

14 (1) summarizes the implementation of rec-
15 ommendations, measures, and options identified in
16 paragraphs (1) and (2) of subsection (f);

17 (2) using the performance metric under sub-
18 section (d), describes progress made by the executive
19 branch, as compared to the baseline established pur-
20 suant to subsection (c)(3), on expediting the permit-
21 ting of activities that will increase exploration for,
22 and development of, domestic critical minerals; and

23 (3) compares the United States to other coun-
24 tries in terms of permitting efficiency and any other

1 criteria relevant to the globally competitive critical
2 minerals industry.

3 (i) INDIVIDUAL PROJECTS.—Using data from the
4 Secretary of Agriculture and the Secretary generated
5 under subsection (g), the Director of the Office of Man-
6 agement and Budget shall prioritize inclusion of individual
7 critical mineral projects on the website operated by the
8 Office of Management and Budget in accordance with sec-
9 tion 1122 of title 31, United States Code.

10 (j) REPORT OF SMALL BUSINESS ADMINISTRA-
11 TION.—Not later than 1 year and 300 days after the date
12 of enactment of this Act, the Administrator of the Small
13 Business Administration shall submit to the Committees
14 on Small Business and Natural Resources of the House
15 of Representatives and Small Business and Entrepreneur-
16 ship and Energy and Natural Resources of the Senate a
17 report that assesses the performance of Federal agencies
18 with respect to—

19 (1) complying with chapter 6 of title 5, United
20 States Code, in promulgating regulations applicable
21 to the critical minerals industry; and

22 (2) performing an analysis of regulations appli-
23 cable to the critical minerals industry that may be
24 outmoded, inefficient, duplicative, or excessively bur-
25 densome.

1 (k) DEFINITIONS.—In this section:

2 (1) BYPRODUCT.—The term “byproduct” has
3 the meaning given such term in section 7002 of the
4 Consolidated Appropriations Act, 2021 (Public Law
5 116–260).

6 (2) CRITICAL MINERAL.—The term “critical
7 mineral” has the meaning given such term in section
8 7002 of the Consolidated Appropriations Act, 2021
9 (Public Law 116–260) except that such term shall
10 not exclude materials described in subsection
11 (a)(3)(B)(iii) of such section.

12 (3) CRITICAL MINERAL PROJECT.—The term
13 “critical mineral project” means a project—

14 (A) located on—

15 (i) a mining claim, millsite claim, or
16 tunnel site claim for any locatable mineral;

17 (ii) lands open to mineral entry; or

18 (iii) a Federal mineral lease; and

19 (B) for the purpose of producing a critical
20 mineral, including—

21 (i) as a byproduct, or a product of a
22 host mineral, or from tailings; or

23 (ii) through an exploration project
24 with respect to which the presence of a by-
25 product is a reasonable expectation, based

1 on known mineral companionship, geologic
2 formation, mineralogy, or other factors.

3 (4) INDIAN TRIBE.—The term “Indian Tribe”
4 has the meaning given such term in section 4 of the
5 Indian Self-Determination and Education Assistance
6 Act (25 U.S.C. 5304).

7 (5) SECRETARY.—The term “Secretary” means
8 the Secretary of the Interior.

9 (6) STATE.—The term “State” means—

10 (A) a State;

11 (B) the District of Columbia;

12 (C) the Commonwealth of Puerto Rico;

13 (D) Guam;

14 (E) American Samoa;

15 (F) the Commonwealth of the Northern
16 Mariana Islands; and

17 (G) the United States Virgin Islands.

18 (7) LEAD AGENCY.—The term “lead agency”
19 means the agency with primary responsibility for
20 issuing a mineral exploration or mine permit for a
21 project.

22 (8) MINERAL EXPLORATION OR MINE PER-
23 MIT.—The term “mineral exploration or mine per-
24 mit” means—

1 (A) an authorization of the Bureau of
2 Land Management or the Forest Service, as ap-
3 plicable, for a premining activity that requires
4 analysis under the National Environmental Pol-
5 icy Act of 1969 (42 U.S.C. 4321 et seq.);

6 (B) a plan of operations issued by the Bu-
7 reau of Land Management or the Forest Serv-
8 ice; and

9 (C) a permit for a project located in an
10 area for which a hardrock mineral permit or
11 lease is available.

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