

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

March 5, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff – Rebecca Konolige
Subcommittee on Energy and Mineral Resources (x5-9297)

Mark-Up: **H.R. 520 (Rep. Mark E. Amodei)**, 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.
March 7, 2018 at 10:15AM; 1324 Longworth HOB

H.R. 520, *National Strategic and Critical Minerals Production Act*

Summary of the Bill

On January 13, 2017, Congressman Mark E. Amodei (R- NV) introduced H.R. 520, the *National Strategic and Critical Minerals Production Act*. This bill supports domestic production of critical minerals by improving and streamlining related permitting processes. A version of this bill has passed the House in the last three Congresses: H.R. 4402 (112th Congress); H.R. 761 (113th Congress) and as part of H.R. 4 (113th Congress); and H.R. 1937 (114th Congress). An identical bill, S.145, was introduced in the Senate on January 12, 2017, by Senator Dean Heller (R-NV).

Cosponsors

Rep. Bruce Westerman (R-AR), Rep. Paul Cook (R-CA), Rep. Paul Gosar (R-AZ), Rep. Jeff Duncan (R-SC), Rep. Cathy McMorris Rodgers (R-WA), Rep. Doug Lamborn, (R-CO), Rep. Scott Tipton (R-CO), Rep. Bill Flores (R-TX), Rep. Stevan Pearce (R-NM), Rep. Don Young (R-AK), Rep. Doug LaMalfa, (R-CA), Rep. Kevin Cramer (R-ND), Rep. Raul Labrador (R-ID), Rep. F. James Sensenbrenner, Jr. (R-WI), Rep. Michael K. Simpson (R-ID), Rep. Tom McClintock (R-CA), Rep. John Abney Culberson (R-TX), Rep. Tom Graves (R-GA), Rep. Jody B. Hice (R-GA), Rep. Mia B. Love (R-UT), Rep. Bill Johnson (R-OH), Rep. Pete Sessions (R-TX), Rep. Mike Bishop (R-MI), Rep. Glenn Thompson (R-PA), Rep. Tom Cole (R-OK), Rep. Andy Barr (R-KY), Rep. Pete Olson (R-TX), Rep. Chris Stewart (R-UT), Rep. Vicky Hartzler (R-MO), Rep. James B. Renacci (R-OH), Rep. Charles J. “Chuck” Fleischmann (R-TN), Rep. Sam Graves (R-MO), Rep. Alexander X. Mooney (R-WV), Rep. Harold Rogers (R-KY), Rep. Liz Cheney (R-WY), and Rep. Robert E. Latta (R-OH).

Background

Domestic mining is essential to the economic well-being, national security, and continued technological advancement of the United States. Mining provides essential metals and minerals for industries across the country, including agriculture, telecommunications, construction, health care, manufacturing, transportation, renewable energy development, and raw materials necessary to rebuild America's infrastructure.

H.R. 520 supports robust mineral production in the United States by boosting efficiency in the permitting process for these resources, emphasizing coordination between federal and State agencies, minimizing delays and duplicative reviews, and creating more predictable timeframes.

H.R. 520 also aligns with policy objectives in President Trump's Executive Order 13817 (82 FR 60835) outlining a federal strategy to ensure a reliable supply of critical minerals. The federal government is instructed to "[streamline] leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals."¹

In 2017, industrial materials production, including sand, gravel, and crushed stone, had a total value of \$48.9 billion, while metal mines production was valued at \$26.3 billion.² Every building, bridge, highway, and infrastructure project relies on mined materials, such as the metallurgical coal and iron ore used in steel production.

Despite the existence of substantial reserves of critical resources in the United States, the issue of import reliance has become an increasing area of concern. In 1986, the U.S. was dependent on foreign sources for 30 non-fuel mineral materials; in 2017, the number of net import reliant commodities more than doubled to 64.³ Of these, 21 commodities were imported at a rate of 100 percent.⁴ China provides the greatest number of these materials to the United States, acting as a major supplier of 26 commodities in 2017.⁵ As such, the U.S. is dependent on China for many necessary components of technology used from laptops to cell phones, as well as military applications and health-care. In the event of disruptions to the global supply chain, the United States needs a robust domestic mineral supply to meet strategic domestic needs.

Before any mining project may occur in the United States, the interested parties must first proceed through the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) process, undergo extensive permitting analysis at the federal and State level, demonstrate financial assurance, and engage with stakeholders. These tasks take years to complete.

Acquiring all necessary permits is a particularly time-consuming, confusing, and expensive process. Agencies at both the State and federal level share different regulatory and land

¹ President Donald J. Trump, "*Presidential Executive Order on a Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals*," The White House, December 20, 2017. <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-federal-strategy-ensure-secure-reliable-supplies-critical-minerals/>.

² United States Geological Survey, "Mineral Commodities Summaries 2018," January 31, 2018. <https://minerals.usgs.gov/minerals/pubs/mcs/2018/mcs2018.pdf>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

management responsibilities for aspects of the mining permitting process, resulting in an unclear delineation of authority.

Today, the U.S. averages 7 to 10 years for final permitting approval, and permitting delays are considered the greatest risk to the economic viability of mining projects in the United States.⁶ In comparison, countries like Canada and Australia have demonstrated a capacity to follow specific permitting timelines while maintaining environmental protections. These countries' permitting timeframes average around two years,⁷ and are ranked as the top two countries for mining investment.⁸

H.R. 520 improves and streamlines the permitting process. It authorizes a lead agency to coordinate between federal agencies, States, and project proponents to minimize delays, create and adhere to permitting timelines, set clear permitting goals, and track progress against those goals.

H.R. 520 also includes a provision on NEPA determination, under which the authorized lead agency will consider NEPA satisfied with respect to the permit if a State or federal agency takes specified considerations into account, including the environmental impact of the action to be conducted under the permit. If the lead agency cannot make this determination, the agency will work with the project proponent and other relevant parties to create a permitting timeline, which cannot exceed 30 months. This expedites permitting reviews while maintaining robust environmental protections.

Major Provisions/Analysis of H.R. 520

Section 1. Short Title.

- The “National Strategic and Critical Minerals Production Act.”

Section 2. Findings.

Section 3. Definitions.

Section 4. Improving Development of Strategic and Critical Minerals.

- Defines “strategic and critical minerals” as minerals that are necessary: 1) for national defense and national security requirements; 2) for domestic energy infrastructure; 3) to support domestic manufacturing, agriculture, housing, telecommunications, healthcare, and transportation infrastructure; or 4) for the nation’s economic security and trade balance.
- A domestic mine that provides strategic and critical minerals shall be treated as an “infrastructure project” as described in Executive Order 13604.

Section 5. Responsibilities of the Lead Agency.

⁶Behre Dolbear, “2014 Ranking of Countries for Mining Investment,” 2014. <http://www.dolbear.com/wp-content/uploads/2016/04/2014-Where-to-Invest.pdf>.

⁷ SNL Metals & Mining, “Permitting, Economic Value and Mining in the United States,” June 2015. https://nma.org/wp-content/uploads/2016/09/SNL_Permitting_Delay_Report-Online.pdf.

⁸ Behre Dolbear, “2014 Ranking of Countries for Mining Investment”.

- The lead agency shall appoint a project lead to coordinate and consult with cooperating agencies and other agencies involved in the permitting process, project proponents, and contractors to: 1) minimize delays; 2) set and adhere to permitting timelines and schedules; 3) set clear permitting goals; and 4) track progress against those goals.
- If the lead agency determines that any State or federal agency has addressed or will address the environmental impact of the action to be conducted under the permit, as well as other specified considerations, then NEPA is considered satisfied with respect to mineral exploration or mine permits.
- Requires a written record of decision from the lead agency regarding its determination under NEPA within 90 days after receipt of a permit application.
- Requires the lead agency to enhance government coordination on permitting and review by avoiding duplicative reviews, minimizing paperwork, and engaging other agencies and stakeholders early in the process.
- The lead agency shall consider data and analysis from the State of jurisdiction and, as much as is practical, consultations and reviews shall be conducted concurrently rather than sequentially.
- Allows the lead agency, upon request from a State or local planning agency, to establish memoranda of agreement with the project sponsor and other appropriate entities to accomplish coordination activities.
- If the lead agency cannot make the NEPA determination, a project proponent can request that the project lead enter into an agreement that sets time limits for each part of the permitting process; this review process cannot exceed 30 months, unless an extension is mutually agreed upon.
- The lead agency only has to address agency or public comments that are submitted during the public comment period.
- The lead agency shall determine financial assurance requirements for reclamation of a mineral exploration or mining site.
- Exempts certain projects on National Forest Service land from part 294 of title 36, Code of Federal Regulations, or successor regulations.
- Applies this section to any existing mineral exploration or mine permit if the applicant submits a written request to the lead agency; this section will apply to existing permit applications no later than 30 days after the lead agency receives the request.

Section 6. Federal Register Process for Mineral Exploration and Mining Projects.

- Reforms the process currently practiced by the Department of the Interior or the Department of Agriculture, as applicable, for placing and reviewing Federal Register notices for mineral exploration and mine permits.

Section 7. Secretarial Order Not Affected.

- Areas covered by Secretarial Order 3324, issued by the Secretary of the Interior on December 3, 2012, are not affected by this Act.

Administration Position

Unknown.

Cost

CBO has not scored the legislation as introduced this Congress. In the 114th Congress CBO estimated the bill would have no significant effect on the federal budget.

Anticipated Amendments

- Possible Minority amendments to narrow the definition of “strategic and critical minerals”, strip or amend the NEPA equivalency provision, limit exports, and limit application of the Act to sites based on various factors.
- Rep. Gosar technical amendment.

Effect on Current Law (Ramseyer)

N/A