

Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman
Hearing Memorandum

February 13, 2018

To: Natural Resources Committee Members

From: Majority Committee Staff, Rebecca Konolige (x61879)
Subcommittee on Energy and Mineral Resources

Subject: **Legislative hearing on 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.
February 15, 2018, at 2:00 PM; 1324 Longworth HOB

H.R. 520 (Rep. Mark Amodei), *“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.

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), Rep. Robert E. Latta (R-OH)

Invited Witnesses

Panel I

The Honorable Mark E. Amodei (R-NV)
Member of Congress

Panel II

Mr. David S. Abraham
Senior Fellow, New America Foundation
Director, Technology, Rare and Electronics Materials Center
Trumbull, Connecticut

Mr. Greg Lucero
Vice President, Community & Government Affairs
Arizona Mining
Tucson, Arizona

Mr. Aaron Mintzes
Senior Policy Counsel
Earthworks
Washington, DC

Mr. Doug Stiles
General Manager
Hecla Mining Company
Coeur d Alene, Idaho

Background

Domestic mining is essential to the economic well-being, robust national security, infrastructure modernization, and continued technological advancement of the United States. Essentially, if a resource cannot be grown, it must be mined. Moreover, the first step of any infrastructure project – from highways and skyscrapers to solar farms and power plants – is mining.

H.R. 520, the National Strategic and Critical Minerals Production Act, works to support 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 December 20, 2017 Executive Order 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

A version of this bill has passed the House in the last three Congresses: H.R. 4402 (112th Congress); H.R. 761 (113th Congress); as part of H.R. 4 (113th Congress); and H.R. 1937 (114th Congress).

Mining is a Critical Industry

Mining provides essential metals and materials used in industries across the country, including agriculture, telecommunications, construction, health care, manufacturing, transportation, and renewable energy development. To cite just one example, thin and inexpensive solar panels require tellurium, a material three times rarer than gold, found in only 0.0000001 percent of the earth’s crust.²

Mineral resources also inject value into the economy, both directly, via sale of the resources, and indirectly, by growing jobs. According to the United States Geological Survey, minerals remained “fundamental” to the nation’s economy in 2017, contributing to real Gross Domestic Product (GDP) in various fields, including mining, processing, and manufacturing finished products.³ The value of the non-fuel minerals produced at U.S. mines was \$75.2 billion; raw and recycled materials combined were consumed by downstream industries at an estimated value of \$2.94 trillion.⁴

Despite the existence of substantial reserves of these 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 64.⁵ Of these, 50 materials were imported at a rate greater than 50 percent, including 21 commodities imported at a rate of 100 percent.⁶ China provides the greatest number of these materials to the United States, acting as a major supplier of 26

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 Nicola Jones, “*A Scarcity of Rare Metals is Hindering Green Technologies*,” *Yale Environment* 360, November 18, 2013. https://e360.yale.edu/features/a_scarcity_of_rare_metals_is_hindering_green_technologies.

³ United States Geological Survey, “*Mineral Commodities Summaries 2018*,” January 31, 2018. <https://minerals.usgs.gov/minerals/pubs/mcs/2018/mcs2018.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

commodities in 2017.⁷ 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 must have a robust domestic supply of critical minerals on which to rely.

Definition of Strategic and Critical Minerals

H.R. 520 provides a broad definition of “strategic and critical minerals” to ensure minerals vital for a variety of industries are covered. The bill also emphasizes the role of critical minerals in modernizing the nation’s infrastructure.

Notably, critical materials go far beyond rare earths and metals alone. 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.⁸ Every building, bridge, highway, and infrastructure project relies on mined materials, such as the metallurgical coal and iron ore used in steel production.

Permitting Timelines

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

The lengthy and uncertain permitting timeline greatly impedes domestic mining activity. In fact, the U.S. averages 7 to 10 years for final permitting approval, and permitting delays are considered the greatest risk to mining projects in the United States.⁹ In comparison, countries like Canada and Australia have illustrated a capacity to follow specific permitting timelines while

⁷ *Id.*

⁸ *Id.*

⁹ Behre Dolbear, “2014 Ranking of Countries for Mining Investment,” 2014. <http://www.dolbear.com/wp-content/uploads/2016/04/2014-Where-to-Invest.pdf>.

maintaining environmental protections. These countries' permitting timeframes average around two years,¹⁰ and are ranked as the top two countries for mining investment.¹¹

To boost access critical minerals in a reliable and timely manner, 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, wherein 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 provision will expedite elements of the permitting review process while maintaining a robust environmental review.

Conclusion

The United States needs a comprehensive, long-term policy to ensure a steady supply of domestic critical minerals. These materials are necessary for America's economic competitiveness, modernization of infrastructure, national security, advanced technological development, and many other essential purposes. Reliance on foreign sources like China leaves the United States vulnerable to potential disruptions in the supply chain. Moreover, a country so rich in natural resources should be able to utilize them in a responsible and efficient manner, creating direct and indirect jobs at the same time. H.R. 520 is an important step in achieving these goals.

Section-by-Section

Section 1: Short title.

- The "National Strategic and Critical Minerals Production Act."

Section 2: Findings.

Congress finds that:

¹⁰ 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.

¹¹ Behre Dolbear, "2014 Ranking of Countries for Mining Investment".

- The industrialization of developing nations has driven demand for non-fuel minerals necessary for a variety of technologies.
- Minerals and metals are essential for economic growth, national security, technological innovation, and the manufacturing and agricultural supply chain.
- Minerals and mineral materials are critical components of infrastructure modernization projects in the United States.
- Exploration, production, processing, use, and recycling of materials contributes significantly to the economic well-being, security, and general welfare of the nation.
- The United States has vast mineral resources, but is increasingly dependent on foreign sources.
- The 2014 Ranking of Countries for Mining Investment found that 7-10 year permitting delays are the most significant risk to mining projects in the United States.
- In 2016, the Government Accountability Office (GAO) found that the federal government’s approach to critical minerals issues had a lack of coordination, as well as data limitations and too narrow of a focus.

Section 3: Definitions.

This section defines the key terms used in the legislation.

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.

- 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 begin to apply to such 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 at this time.

Cost

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

Effect on Current Law (Ramseyer)

N/A