

NATIONAL STRATEGIC AND CRITICAL MINERALS
PRODUCTION ACT OF 2012

JULY 9, 2012.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4402]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4402) 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 United States economic and national security and manufacturing competitiveness, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Strategic and Critical Minerals Production Act of 2012”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The industrialization of China and India has driven demand for nonfuel mineral commodities, sparking a period of resource nationalism exemplified by China’s reduction in exports of rare-earth elements necessary for telecommunications, military technologies, healthcare technologies, and conventional and renewable energy technologies.

(2) The availability of minerals and mineral materials are essential for economic growth, national security, technological innovation, and the manufacturing and agricultural supply chain.

(3) The exploration, production, processing, use, and recycling of minerals contribute significantly to the economic well-being, security and general welfare of the Nation.

(4) The United States has vast mineral resources, but is becoming increasingly dependent upon foreign sources of these mineral materials, as demonstrated by the following:

(A) Twenty-five years ago the United States was dependent on foreign sources for 30 nonfuel mineral materials, 6 of which the United States imported 100 percent of the Nation's requirements, and for another 16 commodities the United States imported more than 60 percent of the Nation's needs.

(B) By 2011 the United States import dependence for nonfuel mineral materials had more than doubled from 30 to 67 commodities, 19 of which the United States imported 100 percent of the Nation's requirements, and for another 24 commodities, imported more than 50 percent of the Nation's needs.

(C) The United States share of world wide mineral exploration dollars was 8 percent in 2011, down from 19 percent in the early 1990s.

(D) In the 2012 Ranking of Countries for Mining Investment, out of 25 major mining countries, the United States ranked last with Papua New Guinea in permitting delays, and towards the bottom regarding government take and social issues affecting mining.

SEC. 3. DEFINITIONS.

In this Act:

(1) **STRATEGIC AND CRITICAL MINERALS.**—The term “strategic and critical minerals” means minerals that are necessary—

(A) for national defense and national security requirements;

(B) for the Nation's energy infrastructure, including pipelines, refining capacity, electrical power generation and transmission, and renewable energy production;

(C) to support domestic manufacturing, agriculture, housing, telecommunications, healthcare, and transportation infrastructure; and

(D) for the Nation's economic security and balance of trade.

(2) **AGENCY.**—The term “agency” means any agency, department, or other unit of Federal, State, local, or tribal government, or Alaska Native Corporation.

(3) **MINERAL EXPLORATION OR MINE PERMIT.**—The term “mineral exploration or mine permit” includes plans of operation issued by the Bureau of Land Management and the Forest Service pursuant to 43 CFR 3809 and 36 CFR 228A respectively.

TITLE I—DEVELOPMENT OF DOMESTIC SOURCES OF STRATEGIC AND CRITICAL MINERALS

SEC. 101. IMPROVING DEVELOPMENT OF STRATEGIC AND CRITICAL MINERALS.

Domestic mines that will provide strategic and critical minerals shall be considered an “infrastructure project” as described in Presidential Order “Improving Performance of Federal Permitting and Review of Infrastructure Projects” dated March 22, 2012.

SEC. 102. RESPONSIBILITIES OF THE LEAD AGENCY.

(a) **IN GENERAL.**—The lead agency with responsibility for issuing a mineral exploration or mine permit shall appoint a project lead who shall coordinate and consult with other agencies, cooperating agencies, project proponents and contractors to ensure that agencies minimize delays, set and adhere to timelines and schedules for completion of reviews, set clear permitting goals and track progress against those goals.

(b) The lead agency with responsibility for issuing a mineral exploration or mine permit shall determine any such action would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 if the procedural and substantive safeguards of the lead agency's permitting process alone, any applicable State permitting process alone, or a combination of the two processes together provide an adequate mechanism to ensure that environmental factors are taken into account.

(c) The lead agency with responsibility for issuing a mineral exploration or mine permit shall 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 the following best practices:

- (1) Deferring to and relying upon baseline data, analysis and reviews preformed by State agencies with jurisdiction over the proposed project.
- (2) Conducting reviews concurrently rather than sequentially to the extent practicable and when such concurrent review will expedite rather than delay a decision.
- (d) At the request of a project proponent, the project lead of the agency with responsibility for issuing a mineral exploration or mine permit shall enter into an agreement with the project proponent and other cooperating agencies that sets time limits for each part of the permit review process including the following:
 - (1) The decision on whether to prepare a document required under the National Environmental Policy Act of 1969.
 - (2) A determination of the scope of any document required under the National Environmental Policy Act of 1969.
 - (3) The scope of and schedule for the baseline studies required to prepare a document required under the National Environmental Policy Act of 1969.
 - (4) Preparation of any draft document required under the National Environmental Policy Act of 1969.
 - (5) Preparation of a final document required under the National Environmental Policy Act of 1969.
 - (6) Consultations required under applicable laws.
 - (7) Submission and review of any comments required under applicable law.
 - (8) Publication of any public notices required under applicable law.
 - (9) A final or any interim decisions.
- (e) In no case should the total review process described in subsection (d) exceed 30 months unless agreed to by the signatories of the agreement.
- (f) The lead agency is not required to address agency or public comments that were not submitted during the public comment periods provided by the lead agency or otherwise required by law.
- (g) The lead agency will determine the amount of financial assurance for reclamation of a mineral exploration or mining site, which must cover the estimated cost if the lead agency were to contract with a third party to reclaim the operations according to the reclamation plan, including construction and maintenance costs for any treatment facilities necessary to meet Federal, State or tribal environmental standards.

SEC. 103. CONSERVATION OF THE RESOURCE.

In developing the mineral exploration or mine permit, the priority of the lead agency shall be to maximize the development of the mineral resource, while mitigating environmental impacts, so that more of the mineral resource can be brought to the market place.

SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EXPLORATION AND MINING PROJECTS.

(a) **PREPARATION OF FEDERAL NOTICES FOR MINERAL EXPLORATION AND MINE DEVELOPMENT PROJECTS.**—The preparation of Federal Register notices required by law associated with the issuance of a mineral exploration or mine permit shall be delegated to the organization level within the agency responsible for issuing the mineral exploration or mine permit. All Federal Register notices regarding official document availability, announcements of meetings, or notices of intent to undertake an action shall be originated and transmitted to the Federal Register from the office where documents are held, meetings are held, or the activity is initiated.

(b) **DEPARTMENTAL REVIEW OF FEDERAL REGISTER NOTICES FOR MINERAL EXPLORATION AND MINING PROJECTS.**—Absent any extraordinary circumstance or except as otherwise required by any Act of Congress, each Federal Register notice described in subsection (a) shall undergo any required reviews within the Department of the Interior or the Department of Agriculture and be published in its final form in the Federal Register no later than 30 days after its initial preparation.

TITLE II—JUDICIAL REVIEW OF AGENCY ACTIONS RELATING TO EXPLORATION AND MINE PERMITS

SEC. 201. DEFINITIONS FOR TITLE.

In this title the term “covered civil action” means a civil action containing a claim under section 702 of title 5, United States Code, regarding agency action affecting a mineral exploration or mine permit.

SEC. 202. TIMELY FILINGS.

A covered civil action is barred unless filed no later than the end of the 60-day period beginning on the date of the final Federal agency action to which it relates.

SEC. 203. EXPEDITION IN HEARING AND DETERMINING THE ACTION.

The court shall endeavor to hear and determine any covered civil action as expeditiously as possible.

SEC. 204. LIMITATION ON PROSPECTIVE RELIEF.

In a covered civil action, the court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of a legal requirement, and is the least intrusive means necessary to correct that violation.

SEC. 205. LIMITATION ON ATTORNEYS’ FEES.

Sections 504 of title 5, United States Code, and 2412 of title 28, United States Code (together commonly called the Equal Access to Justice Act) do not apply to a covered civil action, nor shall any party in such a covered civil action receive payment from the Federal Government for their attorneys’ fees, expenses, and other court costs.

PURPOSE OF THE BILL

The purpose of H.R. 4402, as ordered reported, is 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 United States economic and national security and manufacturing competitiveness.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4402, the National Strategic and Critical Minerals Production Act of 2012, addresses the most significant roadblock to mineral exploration and development in the United States: permitting timelines. Currently the average timeframe for acquiring permits for domestic mine development on federal lands takes an average of seven to ten years. This needless delay puts the United States at a competitive disadvantage with other mineral rich countries and leaves the U.S. more dependent on foreign sources of minerals and mined materials, including rare earth elements. Today the U.S. is almost 100 percent dependent on China for rare earth elements, even though the U.S. has economic deposits of these mineral resources and at one time had the largest market share in the world. H.R. 4402 builds on successful highway legislation and Administrative guidance on permitting procedures for infrastructure and renewable energy projects by requiring the lead agency to coordinate and effectively communicate with all cooperating agencies, project proponents and other stakeholders. Furthermore, the bill eliminates duplicative analysis, provides for timely filings for litigants, and allows 30 months for the lead agency to prepare, consider and reach a decision on permitting for mine development.

In the 2012 Ranking of Countries for Mining Investment, the United States ranked with Papua New Guinea as last out of 25

major mining countries in permitting delays, and towards the bottom regarding taxes, fees and social issues affecting mining. Permitting timelines for hard rock mines on federal land take the longest of the 25 mineral producing nations. On average it can take seven to ten years or more to acquire all of the permits and to work through litigation brought by environmental groups.

Mineral production is a key economic activity, supplying strategic and critical metals and minerals essential for agriculture, communication, technology, construction, health care, manufacturing, transportation, and the arts. More specifically, strategic metals and metal alloys are an integral component of aerospace, defense, and other critical infrastructure. Minerals are also necessary to satisfy the basic requirements of an individual's well-being: food, clothing, shelter, and a clean, healthy environment.

Mining of mineral resources creates tangible value, introducing new money into the nation's economic system. Additional tangible value is added to the raw mined product through manufacturing, construction, and other uses. Harvesting domestic mineral resources contributes to local economies, creates jobs, and benefits our nation's overall economic security.

According to the National Research Council, one of the primary advantages the United States possesses over its strongest industrial competitors is its domestic resource base. The United States is among the world's largest producers of many important metals and minerals, particularly copper, gold, lead, molybdenum, silver, and zinc, and it still has substantial domestic reserves of these metals. Yet U.S. mineral exploration stagnated or declined during most of the 1990s and 2000s while global mineral exploration trends were strongly positive.

In the early 1990s, the U.S. received 20 percent of the worldwide mineral exploration budget; today it hovers around 8 percent. Without increased domestic exploration, significant declines in U.S. mineral production are unavoidable as present reserves are exhausted. The lack of exploration expenditures and other factors described below has led to an increased import dependency for non-fuel mineral materials. For example 25 years ago the United States was dependent on foreign sources for 30 non-fuel mineral materials, six of which were entirely imported to meet the nation's requirements and another 16 of which were imported to meet more than 60 percent of the nation's needs. By 2011, the U.S. import dependence for non-fuel mineral materials had more than doubled from 30 to 67 commodities, 19 of which the U.S. imported 100 percent of the nation's requirements and for another 24 commodities more than 50 percent of the Nation's needs (see Appendix I).

Working through the permitting process also became more cumbersome, as federal and state agencies with land management and regulatory responsibilities over mineral exploration and development projects worked at cross purposes to one another. Legal challenges to National Environmental Policy Act (NEPA) analyses by anti-mining groups also contributed to the delays and uncertainties in obtaining the necessary permits for exploration and development.

For example, a recent (July 2011) analysis of the time required for the Bureau of Land Management (BLM) to prepare NEPA Environmental Impact Statements (EIS) and Supplemental Environ-

mental Impact Statements (SEIS) for mine expansion projects in Nevada, compiled by a mine permitting consultant using data from BLM EIS documents and district office websites, found that the average elapsed time for EIS documents for 11 projects was 53 months and the average elapsed time for SEIS documents for 6 projects was 27 months. These EIS and SEIS documents were for expansion of operations at existing active mine sites, not virgin mine project areas with little existing surface disturbance.

Currently the United States lacks a coherent national policy to assure domestic availability of minerals essential for national economic well-being, national security, and global economic competitiveness. The nation's dependence on China for rare-earth elements and rare metals, elements necessary for telecommunications, military technologies, health-care technologies, and conventional and renewable energy technologies, is the most prominent example. The United States recently joined with Japan and the European Union to file a complaint with the World Trade Organization over China's policy of restricting exports of these important mineral resources, resources that we have in economic quantities in our own country.

H.R. 4402 deliberately contains a broad definition of "strategic and critical minerals" to allow for the greatest flexibility over time. In 2006, prior to the world-wide economic downturn, there was great concern over the future availability of platinum group metals and copper. At the time, projections in the demand for copper indicated that by 2016 30 large-scale copper deposits would have to come on line to meet world-wide demand; there were not enough copper deposits in the pipeline to make up for the projected demand curve. The economic downturn in 2008 and the delayed economic recovery have pushed the 2016 copper supply demand threshold further into the future.

Even sand and gravel and other construction mineral materials can be in short supply or not available, as the United States Geological Survey discovered in 2009 during the "Great California Shakeout," the first simulated major earthquake emergency response exercise conducted in Southern California. In its assessment of the scope of damage and the materials needed for reconstruction, the agency discovered there were not enough sand and gravel and other construction materials available in the region to meet the affected area's needs.

In the current mineral commodity market environment, most people are focused on rare earths and China's restriction on the exports of those metals. Consequently, they want to restrict the definition of "strategic and critical minerals" to only include rare earths and a small number of other commodities. However, any mineral commodity can be in short supply at any given time and the United States needs to have the flexibility to allow for access to and development of those commodities that occur in economic quantities in this country.

Finally, the President has recognized the problems associated with long permitting time-frames for infrastructure and renewable energy projects and has issued guidance documents requiring coordination and timely processing of permits to be issued by federal agencies with regulatory responsibilities for the project proponents to be able to begin construction in a timely manner. This legislation builds on this precedent set by the Administration by applying

the principles outlined in the guidance documents to mineral exploration and development projects.

During Full Committee consideration of H.R. 4402, Congressman Mark Amodei (R–NV) offered a technical amendment to Title 1 of Section 102, which was adopted by voice vote.

COMMITTEE ACTION

H.R. 4402 was introduced on April 19, 2012, by Congressman Mark Amodei (R–NV). The bill was primarily referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. The bill was also referred to the Committee on the Judiciary. On April 26, 2012, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On May 16, 2012, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged by unanimous consent. Congressman Amodei offered amendment designated .001 to the bill; the amendment was adopted by voice vote. Congressman Raúl Grijalva (D–AZ) offered amendment designated .003 to the bill; the amendment was not adopted by voice vote. Congressman Paul Tonko (D–NY) offered amendment designated .001 to the bill; the amendment was not adopted by a bipartisan roll call vote of 12 to 19, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: May 16, 2012

Recorded Vote #: 17

Meeting on / Amendment: **HR 4402**- An amendment offered by Mr. Tonko.001 was NOT AGREED TO by a roll call vote of 12 yeas and 19 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman		X		<i>Mr. Heinrich, NM</i>			
<i>Mr. Markey, MA Ranking</i>				Mr. Benishek, MI		X	
Mr. Young, AK		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>	X			Mr. Rivera, FL			
Mr. Duncan of TN				<i>Ms. Sutton, OH</i>	X		
<i>Mr. Defazio, OR</i>	X			Mr. Duncan of SC		X	
Mr. Gohmert, TX				<i>Ms. Tsongas, MA</i>			
<i>Mr. Faleomavaega, AS</i>				Mr. Tipton, CO		X	
Mr. Bishop, UT		X		<i>Mr. Pierluisi, PR</i>			
<i>Mr. Pallone, NJ</i>	X			Mr. Gosar, AZ		X	
Mr. Lamborn, CO		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mrs. Napolitano, CA</i>	X			Mr. Labrador, ID			
Mr. Wittman, VA				<i>Ms. Hanabusa, HI</i>			
<i>Mr. Holt, NJ</i>	X			Ms. Noem, SD		X	
Mr. Broun, GA				<i>Mr. Tonko, NY</i>	X		
<i>Mr. Grijalva, AZ</i>	X			Mr. Southerland, FL			
Mr. Fleming, LA		X		Mr. Flores, TX			
<i>Ms. Bordallo, GU</i>	X			Mr. Harris, MD		X	
Mr. Coffman, CO		X		Mr. Landry, LA		X	
<i>Mr. Costa, CA</i>	X			Mr. Runyan, NJ		X	
Mr. McClintock, CA		X		Mr. Johnson, OH		X	
<i>Mr. Boren, OK</i>		X		Mr. Amodei, NV		X	
Mr. Thompson, PA		X					
<i>Mr. Sablan, CNMI</i>							
Mr. Denham, CA							
				TOTALS	12	19	

Congressman Rush Holt (D–NJ) offered amendment designated Markey.004 to the bill; the amendment was not adopted by a bipartisan roll call vote of 10 to 24, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: May 16, 2012

Recorded Vote #: 18

Meeting on / Amendment: **HR 4402** – An amendment offered by Mr. Holt (Markey,004 amendment) was
NOT AGREED TO by a roll call vote of 10 yeas and 24 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman		X		<i>Mr. Heinrich, NM</i>			
<i>Mr. Markey, MA Ranking</i>				Mr. Benishek, MI		X	
Mr. Young, AK		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>	X			Mr. Rivera, FL			
Mr. Duncan of TN				<i>Ms. Sutton, OH</i>	X		
<i>Mr. Defazio, OR</i>		X		Mr. Duncan of SC		X	
Mr. Gohmert, TX				<i>Ms. Tsongas, MA</i>			
<i>Mr. Faleomavaega, AS</i>				Mr. Tipton, CO		X	
Mr. Bishop, UT		X		<i>Mr. Pierluisi, PR</i>			
<i>Mr. Pallone, NJ</i>	X			Mr. Gosar, AZ		X	
Mr. Lamborn, CO		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mrs. Napolitano, CA</i>	X			Mr. Labrador, ID			
Mr. Wittman, VA				<i>Ms. Hanabusa, HI</i>			
<i>Mr. Holt, NJ</i>	X			Ms. Noem, SD		X	
Mr. Broun, GA		X		<i>Mr. Tonko, NY</i>	X		
<i>Mr. Grijalva, AZ</i>	X			Mr. Southerland, FL			
Mr. Fleming, LA		X		Mr. Flores, TX		X	
<i>Ms. Bordallo, GU</i>	X			Mr. Harris, MD		X	
Mr. Coffman, CO		X		Mr. Landry, LA		X	
<i>Mr. Costa, CA</i>		X		Mr. Runyan, NJ		X	
Mr. McClintock, CA		X		Mr. Johnson, OH		X	
<i>Mr. Boren, OK</i>		X		Mr. Amodei, NV		X	
Mr. Thompson, PA		X					
<i>Mr. Sablan, CNMI</i>							
Mr. Denham, CA		X					
				TOTALS	10	24	

The bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 24 to 12, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: May 16, 2012

Recorded Vote #: 19

Meeting on / Amendment: **HR 4402- Adopted** and favorably reported to the House of Representatives, as amended, by a roll call vote of 24 yeas and 12 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman	X			<i>Mr. Heinrich, NM</i>			
<i>Mr. Markey, MA Ranking</i>		X		Mr. Benishkek, MI	X		
Mr. Young, AK	X			<i>Mr. Lujan, NM</i>		X	
<i>Mr. Kildee, MI</i>		X		Mr. Rivera, FL			
Mr. Duncan of TN				<i>Ms. Sutton, OH</i>		X	
<i>Mr. Defazio, OR</i>		X		Mr. Duncan of SC	X		
Mr. Gohmert, TX				<i>Ms. Tsongas, MA</i>			
<i>Mr. Faleomavaega, AS</i>				Mr. Tipton, CO	X		
Mr. Bishop, UT	X			<i>Mr. Pierluisi, PR</i>			
<i>Mr. Pallone, NJ</i>		X		Mr. Gosar, AZ	X		
Mr. Lamborn, CO	X			<i>Mr. Garamendi, CA</i>		X	
<i>Mrs. Napolitano, CA</i>		X		Mr. Labrador, ID			
Mr. Wittman, VA				<i>Ms. Hanabusa, HI</i>			
<i>Mr. Holt, NJ</i>		X		Ms. Noem, SD	X		
Mr. Broun, GA	X			<i>Mr. Tonko, NY</i>		X	
<i>Mr. Grijalva, AZ</i>		X		Mr. Southerland, FL	X		
Mr. Fleming, LA	X			Mr. Flores, TX	X		
<i>Ms. Bordallo, GU</i>		X		Mr. Harris, MD	X		
Mr. Coffman, CO	X			Mr. Landry, LA	X		
<i>Mr. Costa, CA</i>	X			Mr. Runyan, NJ	X		
Mr. McClintock, CA	X			Mr. Johnson, OH	X		
<i>Mr. Boren, OK</i>	X			Mr. Amodei, NV	X		
Mr. Thompson, PA	X						
<i>Mr. Sablan, CNMI</i>							
Mr. Denham, CA	X						
				TOTALS	24	12	

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The title of the bill is the “National Strategic and Critical Minerals Production Act of 2012.”

Section 2. Findings

Section 2 finds that the industrialization of China and India has driven demand for non-fuel mineral commodities, sparking a period of resource nationalism exemplified by China’s reduction in exports of rare-earth elements, elements necessary for telecommunications, military technologies, health-care technologies, and conventional and renewable energy technologies.

Further, the availability of minerals and metals are essential for economic growth, national security, technological innovation, and the manufacturing and agricultural supply chain.

Finally, in the 2012 Ranking of Countries for Mining Investment, out of 25 major mining countries, the United States ranked last with Papua New Guinea in permitting delays, and towards the bottom regarding government take and social issues affecting mining.

Section 3. Definitions

This section defines “strategic and critical minerals” as those that are necessary for national defense and national security requirements; for the nation’s energy infrastructure including pipelines, refining capacity, electrical power generation and transmission, and renewable energy production; to support domestic manufacturing, agriculture, housing, telecommunications, health-care and transportation infrastructure; and for the nation’s economic security and balance of trade.

Title I. Development of Domestic Sources of Strategic and Critical Minerals

Section 101. Improving development of strategic and critical minerals

Section 101 states that those domestic mines that provide strategic or critical minerals shall be treated as an “infrastructure project” as laid out in the President’s Executive Order “Improving Performance of Federal Permitting and Review of Infrastructure Projects,” dated March 22, 2012.

Section 102. Responsibilities of the lead agency

This section outlines responsibilities for the lead agency responsible for issuing mineral exploration or mine permits. Specifically, these include the identification of a project lead to coordinate with stakeholders, cooperating agencies and project proponents to minimize delays, set and adhere to timelines and schedules for completion of reviews, to establish clear permitting goals and to track progress in meeting those goals.

It also provides for some NEPA relief if the lead agency and/or state agency have procedural and substantive safeguards built into their permitting process to ensure that environmental safeguards are taken into account. Further, it requires the lead agency to enhance government coordination on permitting and review by avoid-

ing duplicative reviews, minimizing paperwork and engaging other agencies and stakeholders early in the process.

In addition, a project proponent can request that the project lead enter into an agreement that lays out a timeline for permit review process. The review process cannot exceed more than 30 months unless the signatories to the agreement agree to an extension of time. The lead agency only has to address agency or public comments that were submitted during any public comment period. Lastly, this section restates current bonding requirements.

Section 103. Conservation of the resource

Section 103 contains a “conservation of the resource” provision, providing that the responsibility of the lead agency is to maximize the development of the resource, while mitigating for environmental impacts so that more of the mineral resource can be brought to the marketplace.

Section 104. Federal Register process for mineral exploration and mining projects

This section reforms the process currently practiced by the Department of the Interior for placing and reviewing Federal Register notices for mineral exploration and mining projects that currently adds months and even years to the permitting process.

Title II. Judicial Review of Agency Actions Relating to Exploration and Mining Permits

Section 201. Definitions for title

Section 201 defines “covered civil action” as one containing a claim under section 702 of title 5, United States Code, regarding agency action affecting a mineral exploration or mine permit.

Sec. 202. Timely filings

This section provides a 60-day window for parties to file a civil action affecting a covered civil action.

Section 203. Expedition in hearing and determining the action

Section 203 requires the court to hear and determine any covered action as expeditiously as possible.

Section 204. Limitation on prospective relief.

This section limits prospective relief unless the relief is narrowly drawn, is necessary to correct a violation of a legal requirement and is the least intrusive means to correct the violation.

Section 205. Limitation on attorneys’ fees

Section 205 provides that civil actions under the Equal Access to Justice Act are not allowed for covered civil actions and the federal government cannot pay for attorney’s fees, expenses or court costs.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4402—National Strategic and Critical Minerals Production Act of 2012

CBO estimates that implementing H.R. 4402 would have no significant impact on the federal budget. Enacting the bill could reduce mandatory payments for attorneys' fees over the 2013–2022 period; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such impacts would be minimal. Enacting the bill would not affect revenues.

The bill would require the Bureau of Land Management (BLM) and the Forest Service to take certain actions aimed at streamlining the process for obtaining permits to extract minerals from federal lands. Based on information from the affected agencies, CBO estimates that the streamlining provisions would have no significant budgetary effect because those agencies are performing most of those activities under current law. The bill also would direct the agencies to expedite the publishing of notices in the Federal Register related to mineral exploration and mining projects. Based on information provided by BLM, CBO estimates that implementing that provision would cost less than \$300,000 a year, assuming appropriation of the necessary amounts. Those funds would be used to hire additional employees to allow the affected agencies to meet the timelines established in the bill.

Finally, H.R. 4402 would exempt lawsuits that affect mineral production on federal lands from the Equal Access to Justice Act. Based on information from the Government Accountability Office, CBO estimates that over the next 10 years, the U.S. Treasury will make payments totaling less than \$50,000 a year on behalf of the Department of the Interior and the Forest Service as a result of such lawsuits. Thus, we estimate that enacting the bill would result in a minimal decrease in direct spending for attorneys' fees over the 2013–2022 period.

H.R. 4402 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974,

this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing H.R. 4402 would have no significant impact on the federal budget. Enacting the bill could reduce mandatory payments for attorneys' fees over the 2013–2022 period; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such impacts would be minimal.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is 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 United States economic and national security and manufacturing competitiveness.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

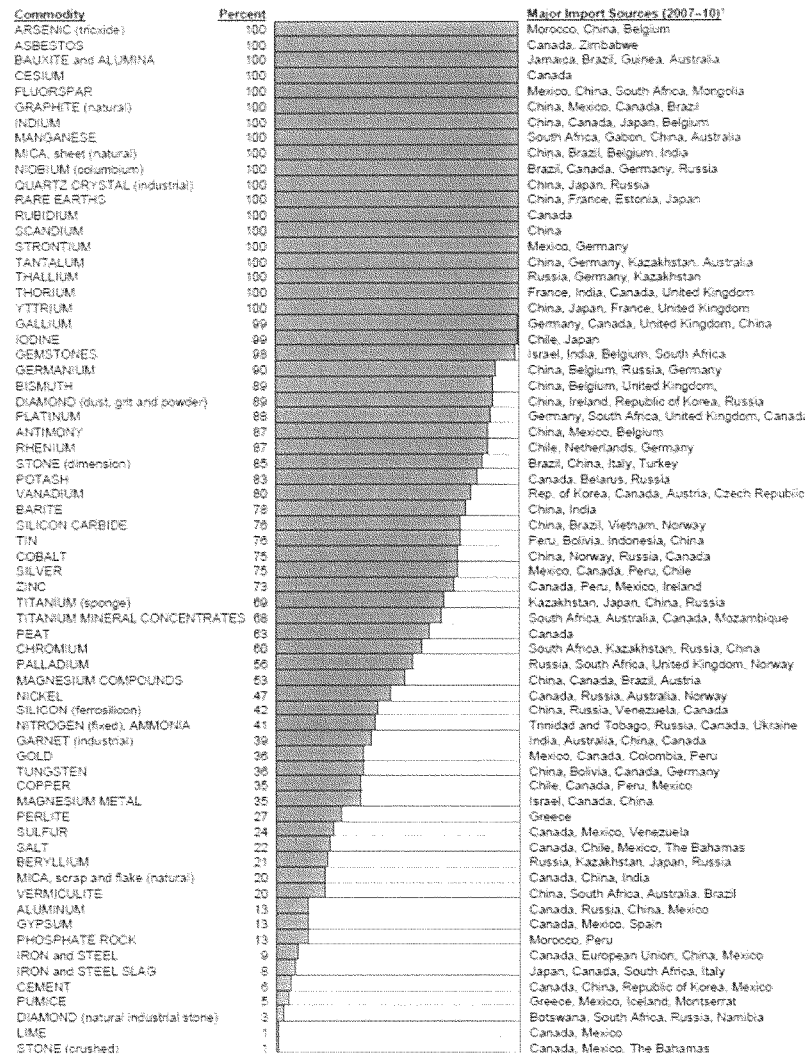
This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

APPENDIX I

2011 U.S. NET IMPORT RELIANCE FOR SELECTED NONFUEL MINERAL MATERIALS



¹In descending order of import share

APPENDIX II: COMMITTEE LETTERS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 14, 2012.

Hand-delivered.

Hon. DOC HASTINGS,
*Chairman, Committee on Natural Resources,
Longworth House Office Building, Washington, DC.*

DEAR CHAIRMAN HASTINGS: I am writing with respect to H.R. 4402, the “National Strategic and Critical Minerals Production Act of 2012,” which the Committee on Natural Resources reported favorably, as amended, on May 16, 2012. As a result of your having consulted with us on provisions in H.R. 4402 that fall within the Rule X jurisdiction of the Committee on the Judiciary, I agree to discharge our Committee from further consideration of this bill so that it may proceed expeditiously to the House floor for consideration.

The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 4402 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and asks that you support any such request.

I would appreciate a response to this letter confirming this understanding with respect to H.R. 4402, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during Floor consideration of H.R. 4402.

Sincerely,

LAMAR SMITH,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC, June 14, 2012.

Hon. LAMAR SMITH,
*Chairman, Committee on the Judiciary,
Rayburn HOB, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 4402, the National Strategic and Critical Minerals Production Act of 2012. As you know, the Committee on Natural Resources ordered reported the bill by a bipartisan vote on May 16, 2012. I appreciate

your support in bringing this legislation before the House of Representatives, and accordingly, understand that the Committee on the Judiciary will forego action on the bill.

The Committee on Natural Resources concurs with the mutual understanding that by foregoing consideration of H.R. 4402 at this time, the Committee on the Judiciary does not waive any jurisdiction over the subject matter contained in this or similar legislation. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Judiciary represented on the conference committee. Finally, I would be pleased to include your letter and this response in the bill report filed by the Committee on Natural Resources, as well as in the Congressional Record during floor consideration, to memorialize our understanding.

Thank you for your cooperation.

Sincerely,

DOC HASTINGS,
Chairman.

APPENDIX III: DISSENTING VIEWS

DISSENTING VIEWS—H.R. 4402: NATIONAL STRATEGIC AND CRITICAL MINERALS PRODUCTION ACT OF 2012

We oppose H.R. 4402 because despite the bill's title, it has almost nothing to do with rare earths and other strategic and critical minerals. In fact, under the guise of promoting the development of minerals critical to U.S. national security, this legislation would dramatically reshape virtually all mining on public lands for nearly all minerals.

H.R. 4402 is so broadly drafted that it would reduce or eliminate proper review under the National Environmental Policy Act (NEPA) for almost all types of mines on public lands—including hardrock mines such as silver and uranium; it could limit proper review of mines for minerals that are not remotely critical such as sand or gravel and it would even potentially apply to coal mines. There is virtually no type of mine that would be excluded from the truncated environmental review envisioned by this bill, where the mining industry, rather than the Interior Department, would be able to determine the time available for important environmental reviews.

Moreover, according to Natural Resources Democratic staff analysis of data provided by the BLM for hardrock mines on public lands for which we have complete data, the average time it takes to approve a plan of operation for a mine has actually decreased under the Obama Administration. According to the BLM data, plans of operation for hardrock mines are being approved roughly 17 percent more quickly under the Obama Administration than under the Bush Administration. Despite industry claims, 82 percent of plans of operation are approved within three years under the Obama Administration and according to the BLM, "it takes on average four years to approve a mining plan of operations for a large mine (more than 1,000 acres) on public lands."

We should be working together to formulate a strategy to develop our rare earth and other critical minerals, not giving additional handouts to an industry that can already extract billions of dollars in valuable minerals from public lands without paying a dime in royalties to taxpayers. Promoting the development of minerals that are critical to core national priorities and genuinely susceptible to supply disruption, like rare earth elements, should be an area where Democrats and Republicans can work together.

Rare earth elements are indispensable to a wide range of military, electronic, and industrial applications, as well as a variety of clean energy technologies, such as wind turbines, hybrid vehicles, solar panels and energy efficient light bulbs. There are currently few or no ready substitutes for these minerals in industry, and

there are substantial risks to their overall supply since we rely almost completely on Chinese imports.

This Committee has already reported out legislation on a bipartisan basis to lay the groundwork for developing critical and strategic minerals. Yet the Majority has not brought that bill to the House Floor for a vote and instead is moving H.R. 4402, which would fundamentally change the review of nearly all mining activities on public lands.

This legislation would also undermine the requirement in current law that our public lands be managed for multiple uses by elevating mining above all other uses, potentially threatening hunting, fishing, recreation and other important activities. H.R. 4402 would also needlessly limit judicial review of mining activities on public lands.

The Majority rejected an amendment from National Parks, Forests and Public Lands Subcommittee Ranking Member Grijalva (D-AZ) that would have ensured that nothing in the bill affects the multiple use requirement in the Federal Land Policy and Management Act of 1976 that protects hunting, fishing, grazing and other important activities on our public lands in addition as energy production. Representative Tonko (D-NY) offered an amendment that would have narrowed the scope of the bill solely to rare earths and other critical and strategic minerals which the Majority voted down, demonstrating that this legislation is intended to be much more far reaching than the bill's title indicates. Finally, the Majority rejected an amendment offered by Energy and Mineral Resources Subcommittee Ranking Member Holt (D-NJ) that would have created a royalty for the extraction of hardrock minerals on public lands to ensure that the American people receive a fair return on these valuable minerals that mining companies are currently able to extract for free.

Democrats will continue working to promote development of rare earth and other critical and strategic minerals, but we oppose eviscerating the proper review of virtually all mining on public lands under the guise of promoting the development of these minerals, as H.R. 4402 would do.

EDWARD J. MARKEY.
RUSH HOLT.
PAUL TONKO.
GRACE F. NAPOLITANO.
MADELEINE Z. BORDALLO.
RAÚL M. GRIJALVA.
BEN RAY LUJÁN.

