118TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 118–22

SECURING AMERICA'S CRITICAL MINERALS SUPPLY ACT

MARCH 23, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1068]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1068) to amend the Department of Energy Organization Act to secure the supply of critical energy resources, including critical minerals and other materials, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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39–006

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 "Securing America's Critical Minerals Supply Act".

SEC. 2. AMENDMENT TO THE DEPARTMENT OF ENERGY ORGANIZATION ACT.

The Department of Energy Organization Act (42 U.S.C. 7101 et seq.) is amended—

(1) in section 2, by adding at the end the following:

"(d) As used in sections 102(20) and 203(a)(12), the term 'critical energy resource' means any energy resource—

"(1) that is essential to the energy sector and energy systems of the United States; and

"(2) the supply chain of which is vulnerable to disruption.";

(2) in section 102, by adding at the end the following:

"(20) To ensure there is an adequate and reliable supply of critical energy resources that are essential to the energy security of the United States."; and

(3) in section 203(a), by adding at the end the following:

"(12) Functions that relate to securing the supply of critical energy resources, including identifying and mitigating the effects of a disruption of such supply on—

"(A) the development and use of energy technologies; and

"(B) the operation of energy systems.".

SEC. 3. SECURING CRITICAL ENERGY RESOURCE SUPPLY CHAINS.

(a) IN GENERAL.—In carrying out the requirements of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the Secretary of Energy, in consultation with the appropriate Federal agencies, representatives of the energy sector, States, and other stakeholders, shall—

(1) conduct ongoing assessments of—

(A) energy resource criticality based on the importance of critical energy resources to the development of energy technologies and the supply of energy;

(B) the critical energy resource supply chain of the United States;

(C) the vulnerability of such supply chain; and

(D) how the energy security of the United States is affected by the reliance of the United States on importation of critical energy resources;

(2) facilitate development of strategies to strengthen critical energy resource supply chains in the United States, including by—

(A) diversifying the sources of the supply of critical energy resources; and

(B) increasing domestic production, separation, and processing of critical energy resources;

(3) develop substitutes and alternatives to critical energy resources; and

(4) improve technology that reuses and recycles critical energy resources.

(b) CRITICAL ENERGY RESOURCE DEFINED.—In this section, the term "critical energy resource" has the meaning given such term in section 2 of the Department of Energy Organization Act (42 U.S.C. 7101).

PURPOSE AND SUMMARY

H.R. 1068, Securing America's Critical Minerals Supply Act, was introduced by Rep. Larry Bucshon (R–IN) and Rep. Randy K. Weber (R–TX) on February 27, 2023. H.R. 1068 amends the Department of Energy Organization Act by establishing that a purpose of the Department of Energy is to ensure there is an adequate and reliable supply of critical energy resources that are essential to the energy security of the United States and by including new functions of the Department relating to securing critical energy resource supplies.

To carry out these functions, which include identifying and mitigating effects of a critical energy resource supply disruption on the development and use of energy technologies and the operation of energy systems, H.R. 1068 requires the Secretary to conduct ongoing assessments of the nation's supply of critical energy resources, the vulnerability of the critical energy resource supply chain, and

the criticality of energy resources to the development of energy technologies. H.R. 1068 requires further that the Secretary facilitate development of strategies to strengthen critical energy resource supply chains by diversifying sources and increasing domestic production, refining, and processing of resources and that the Secretary develop substitutes and alternatives and improve technology that reuses or recycles critical energy resources.

BACKGROUND AND NEED FOR LEGISLATION

The United States maintains one of the most advanced and complex energy systems in the world. This includes an extensive system for producing and transporting oil, natural gas, and refined product; vast, complex electricity systems that produce and deliver uninterrupted power; and the supply chains of the energy resources and materials necessary for these energy systems and technologies to be built, maintained, operated. Our nation's economy, security, and the health and safety of its citizens depend upon the reliable and uninterrupted supply of fuels and electricity, as well the secure supplies of energy resources and materials necessary for this to happen.

When the Department of Energy (DOE) was organized in 1977, energy security concerns revolved around oil supply shortages. As a result, energy security emergency functions in the Department of Energy Organization Act focused on distributing and allocating fuels in an emergency. Other functions focused on developing plans and programs for dealing with domestic energy production and import shortages and the provision of an adequate and reliable supply of energy at the lowest reasonable cost.

Over time, these functions in DOE's organic statute have remained largely unchanged, but DOE's responsibilities and authorities have evolved substantially beyond what was envisioned forty years ago. As energy technologies and delivery systems have advanced, including with the growing use of advanced solar, wind, and battery technologies, focus on the supply chains of these technologies and the materials—the minerals and metals and other components—making up or enabling the operations of these technologies has become more important. The need for updating the functions of DOE is necessary to provide a durable, Cabinet-level focus on critical energy resource supplies and to serve the broader missions of the Department to coordinate national energy policy that will help assure the reliable supply of energy for the public.

The urgency of supply chains for advanced and renewable energy systems is underscored by the materials intensive nature of these systems. For example, as outlined in Committee testimony during the 117th Congress, "the materials extracted from the earth to fabricate everything, including wind turbines, solar panels, and batteries (to store grid electricity or power electric vehicles) are typically out of sight, located at remote quarries, mine sites, and mineral processing facilities around the world. Those locations matter in terms of geopolitics and supply-chain risks." [1]

Add to this the sheer scale of critical materials needed for these "clean tech" energy technologies, and the importance of security

[1] See testimony of Mark P. Mills before the Subcommittee on Environment and Climate Change hearing "Back in Action: Restoring Federal Climate Leadership," February 9, 2021. Hearing Print *Serial No. 117–4*.

supplies becomes clear. Projections on the mineral requirements for "green" energy all show massive increases in minerals and related processing. The mining of indium, used in fabricating electricity generating solar semiconductors, for example, will need to increase 8,000%. Cobalt for batteries will need to grow 300% to 800%. Lithium production will need to increase 2,000%. Some 14 metals essential for building clean-tech machines will require increased supplies of elements such as nickel, dysprosium, and tellurium of 200% to 600%.[2]

As recently as 1990, the United States was the world's number-one producer of minerals. By 2018, the United States had fallen to 12th overall in global non-fuel minerals production.[3] A 2022 DOE assessment of critical energy resource supply chain risks notes that China's control of key materials in renewable energy is "across the board," with China in control of "80% of rare earths production and refining that are key for components in technologies such as direct drive generators in wind turbines, and China also controls 61% of global lithium refining key for battery storage and electric vehicles. China also controls 100% of the processing of natural graphite used for battery anodes."[4]

The severity of this overdependence on other countries for critical minerals was brought to the public's attention by the report released during the Trump administration, which found the United States relies on imports for 31 of the 35 critical minerals necessary for the U.S. defense and economy.[5] For 14 of the listed critical minerals, the United States relies completely on imports from other countries; having no U.S. production at all. (As indicated in the above DOE assessment, recent Biden administration reviews confirm U.S. vulnerability.)

Against this backdrop, while Congress has taken action to support research and development, incentives, and interagency planning, this is not enough, given the extent of current dependence on foreign supplies and increasing demand for minerals and materials heavy energy resources. As former DOE Deputy Secretary Mark Menezes has testified before the Committee: "we need to designate an agency with clear authority to address these issues and to serve as the experts in the interagency process for energy."[6]

The Committee finds that H.R. 1068 would further enhance DOE's existing responsibilities over ensuring secure and affordable delivery of energy, by providing durable authority to assess the vulnerability of the critical energy resource supply chain, and the criticality of energy resources, particularly minerals and materials necessary in the development of energy technologies and including the supply chains for renewable energy technologies. The Committee finds the provisions of H.R. 1068 that facilitate the development of strategies to diversify sources of supply, by increasing domestic

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[2] Ibid.

[3] See testimony of Michelle Michot Foss before the Subcommittee on Environment and Climate Change hearing "Building a 100 Percent Clean Economy: Opportunities for and Equitable, Low-Carbon Recovery," September 16, 2020. (https://docs.house.gov/meetings/IF/IF18/20200916/111008/HHRG-116-IF18-Wstate-MichotFossM-20200916-U1.pdf).

[4] See Department of Energy *"America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition,"* February 2022, p. 13).

[5] See Testimony by the Honorable Mark W. Menezes at the Joint Energy, Climate, and Grid Security Subcommittee and Environment, Manufacturing, and Critical Materials Subcommittee Legislative Hearing, "Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains," February 7, 2023. (energycommerce.gov).

[6] Ibid.

production, separation, and processing of critical energy resources, and by pursing the technological development of critical resource alternatives and of reuse and recycling is consistent with DOE's energy security mission, and unique capabilities in the United States government.

COMMITTEE ACTION

On February 7, 2023, the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials held a joint legislative hearing entitled, "Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains," on 17 pieces of legislation, including H.R. 1068. The Subcommittees received testimony from:

- The Honorable Mark Menezes, Former United States Deputy Secretary of Energy, Department of Energy;
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission;
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America;
- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association;
- Raul Garcia, Legislative Director for Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

On February 28, 2023, the Subcommittee on Energy, Climate, and Grid Security met in open markup session and forwarded H.R. 1068, without amendment, to the full Committee by a record vote of 15 yeas and 8 nays. On March 9, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1068 favorably reported, as amended, to the House by a record vote of 26 yeas and 22 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 6

BILL: H.R. 1068, the Securing America's Critical Minerals Supply Act

AMENDMENT: A motion by Mrs. Rodgers to order H.R. 1068 favorably reported to the House, as amended (Final Passage).

DISPOSITION: AGREED TO, by a roll call vote of 26 yeas and 22 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers	X			Rep. Pallone		X	
Rep. Burgess	X			Rep. Eshoo		X	
Rep. Latta	X			Rep. DeGette		X	
Rep. Guthrie	X			Rep. Schakowsky		X	
Rep. Griffith	X			Rep. Matsui		X	
Rep. Bilirakis	X			Rep. Castor		X	
Rep. Johnson	X			Rep. Sarbanes		X	
Rep. Bucshon	X			Rep. Tonko		X	
Rep. Hudson	X			Rep. Clarke		X	
Rep. Walberg	X			Rep. Cárdenas		X	
Rep. Carter	X			Rep. Ruiz		X	
Rep. Duncan	X			Rep. Peters		X	
Rep. Palmer	X			Rep. Dingell		X	
Rep. Dunn				Rep. Veasey		X	
Rep. Curtis	X			Rep. Kuster		X	
Rep. Lesko	X			Rep. Kelly		X	
Rep. Pence	X			Rep. Barragán		X	
Rep. Crenshaw				Rep. Blunt Rochester		X	
Rep. Joyce	X			Rep. Soto		X	
Rep. Armstrong				Rep. Craig		X	
Rep. Weber	X			Rep. Schrier			
Rep. Allen	X			Rep. Trahan		X	
Rep. Balderson	X			Rep. Fletcher		X	
Rep. Fulcher	X						
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks	X						
Rep. Cammack	X						
Rep. Obernolte	X						

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OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 1068 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to ensure there is an adequate and reliable supply of critical energy resources that are essential to the energy security of the United States.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1068 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII,

(1) the following hearings were used to develop or consider H.R. 1068:

On January 31, 2023, the Committee on Energy and Commerce held a hearing entitled, "American Energy Expansion: Strengthening Economic, Environmental, and National Security." The Committee received testimony from:

- The Honorable Paul Dabbar, Former Under Secretary of Energy, Department of Energy;
- Robert McNalley, President, Rapidan Energy Group, LLC;
- Donna Jackson, Director of Membership Development—National Center for Public Policy Research, Project 21; and
- Ana Unruh Cohen, Former Majority Staff Director, U.S. House Select Committee on the Climate Crisis.

On February 16, 2023, the Subcommittee on Energy, Climate, and Grid Security held a field hearing in Midland, Texas, entitled, "American Energy Expansion: Improving Local Economies and

Communities' Way of Life." The Committee received testimony from:

- The Honorable Lori Blong, Mayor of Midland, Texas, and President of Octane Energy;
- Adrian Carrasco, Chairman Midland Hispanic Chamber of Commerce, and President of Premier Energy Services;
- Steven Pruett, President and CEO, Elevation Resources, and Chairman of the Board for Independent Petroleum Association of America; and
- Dr. Michael Zavada, Professor of Biology and Geosciences, and Chair, Department of Geosciences at The University of Texas—Permian Basin.

(2) The following related hearings were held:

On February 7, 2023, the Subcommittees on Environment, Manufacturing, and Critical Materials and Energy, Climate, and Grid Security jointly held a hearing on 17 separate pieces of legislation, including H.R. 1068. The Subcommittee received testimony from:

- The Honorable Mark Menezes, Former U.S. Deputy Secretary of Energy, Department of Energy;
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission;
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America;
- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association
- Raul Garcia, Legislative Director Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1068 contains no earmarks, limited tax benefits, or limited tariff benefits.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides the short title of "Securing America's Critical Minerals Supply Act".

Section 2. Amendment to the Department of Energy Organization Act

Section 2 amends the Department of Energy Organization Act to define critical energy resources as energy resources essential to the U.S. energy sector and energy systems, the supply chains of which are vulnerable to disruption, and by establishing that a purpose of the Department of Energy is to ensure there is an adequate and reliable supply of critical energy resources that are essential to U.S. energy security and by including new functions of the Department relating to securing critical energy resource supplies.

Section 3. Securing critical energy resource supply chains

Section 3 provides that, in carrying out the requirements of Department of Energy Organization Act, the Secretary, in consultation with appropriate agencies, States, and stakeholders, shall conduct ongoing assessments of the nation's supply of critical energy resources, energy resource criticality based on importance to the development of energy technologies and energy supply, and to facilitate development of strategies to strengthen critical energy resource supply chains by diversifying sources and increasing domestic production, refining, and processing of resources, and that the Secretary develop substitutes and alternatives and improve technology that reuses or recycles critical energy resources.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

With respect to the requirement of clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, this section was not made available to the Committee in time for the filing of this report.

MINORITY VIEWS

H.R. 1068, the "Securing America's Critical Minerals Supply Act," amends the Department of Energy Organization Act to assert the Department of Energy's (DOE) role in securing critical energy resource supply chains. The bill directs DOE to conduct ongoing assessments and facilitate the development of strategies to strengthen critical energy resource supply chains.

While the majority claims H.R. 1068 targets and supports the development of critical minerals, including those needed for the development of clean and renewable energy resources, H.R. 1068 uses the term "critical energy resource" instead of "critical minerals" or "critical materials." The bill defines "critical energy resource" to mean "any energy resource that is essential to the energy sector and energy systems of the United States." This definition is not restricted to critical minerals and could be interpreted to include a range of resources, including those that are carbon-emitting or that support the fossil-fuel industry. The bill also does not specify or prioritize the securing of supply chains related to clean or renewable energy, even though the majority claims the bill will support these industries. Without a clear prioritization of clean energy supply chains, H.R. 1068 risks devoting additional DOE resources to supporting carbon-emitting industries. Additionally, there is ambiguity surrounding the definition of "critical energy resource" in H.R. 1068, and how it will interact with existing DOE efforts in the critical minerals and critical materials space. For example, the Department of Energy is currently drafting a list of critical materials using the definition established in the Energy Act of 2020.[1] H.R. 1068 does not attempt to reconcile definitions with existing directives, and additional specificity would be needed.

The Biden Administration, through the Bipartisan Infrastructure Law and the Inflation Reduction Act, has taken steps to develop and onshore clean energy supply chains. For example, the Bipartisan Infrastructure Law included $3 billion for Battery Materials Processing Grants and $3 billion for Battery Manufacturing and Recycling Grants.[2] Additionally, the Inflation Reduction Act established a series of incentives that prioritize clean energy technologies with specific critical minerals and manufacturing requirements, including domestic content requirements.[3] As a result of these investments, DOE is already playing an important role in securing clean energy supply chains.

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[1] Department of Energy, *Critical Minerals and Materials* (www.energy.gov/critical-minerals-materials) (accessed Mar. 21, 2023).

[2] The White House, *A Guidebook to the Bipartisan Infrastructure Law for State, Local, Tribal, and Territorial Governments, and Other Partners* (May 2022) (www.whitehouse.gov/wp-content/uploads/2022/05/BUILDING-A-BETTER-AMERICA-V2.pdf).

[3] The White House, *Building a Clean Energy Economy: A Guidebook to the Inflation Reduction Act's Investments in Clean Energy and Climate Action* (Jan. 2023) (www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf).

Given the climate crisis, we acknowledge that additional work is needed to meet increasing demand for clean energy. However, rather than focusing this bill and the DOE's efforts on critical minerals needed for the clean energy transition, H.R. 1068 obscures the application of this language to potentially include fossil fuel industries.

We support DOE's ongoing role in developing and securing critical mineral supply chains needed for clean energy, but are concerned that this bill is too vague. Additionally, we acknowledge the urgent need to onshore and secure critical minerals for the clean energy transition. However, this bill is not the best approach. We question the assertions made in the majority's report, which state that this bill will help the clean energy transition. While a narrow interpretation of this bill will help the clean energy transition, we oppose this legislation as drafted due to the ambiguity of the term "critical energy resource."

FRANK PALLONE, Jr.,
Ranking Member, Committee on Energy and Commerce.

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