II

111TH CONGRESS
2D SESSION

S. 3521

To provide for the reestablishment of a domestic rare earths materials production and supply industry in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2010

Ms. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To provide for the reestablishment of a domestic rare earths materials production and supply industry in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rare Earths Supply Technology and Resources Transformation Act of 2010'' or the ''RESTART Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Significant quantities of rare earths are used in the production of clean energy technologies,

including advanced automotive propulsion batteries, electric motors, high-efficiency light bulbs, solar panels, and wind turbines. These technologies are used to advance the United States energy policy of reducing dependence on foreign oil and decreasing greenhouse gas emissions through expansion of cleaner sources of energy.

(2) Many modern defense technologies such as radar and sonar systems, precision-guided weapons, cruise missiles, and lasers cannot be built, as designed and specified, without the use of rare earths and materials produced from them.

(3) Rare earths also provide core functionality to a variety of high technology applications in computing, pollution abatement, power generation, water treatment, oil refining, metal alloying, communications, health care, agriculture, and other sectors.

(4) Though at least 15 percent of the world's rare earth reserves are located within the United States, the country now depends upon imports for nearly 100 percent of its rare earth needs because there are virtually no active rare earth producers in the United States. More than 97 percent of all rare earths for world consumption are produced in China.

(5) The ability—and willingness—of China to export rare earths is eroding due to its growing domestic demand, its enforcement of environmental law on current producers, and its mandate to consolidate the industry by decreasing its number of mining permits. The Chinese Ministry of Industry and Information Technology draft rare earths plan for 2009 to 2015 proposes an immediate ban on the export of dysprosium, terbium, thulium, lutetium, and yttrium, the so-called ''heavy'' rare earths, and a restriction on the exports of all other, light, rare earth metals to a level well below that sufficient to satisfy the demand of Japan in 2008 alone for such metals.

(6) Furthermore, the United States has limited rare earth production, remains entirely dependent on overseas refineries for further elemental and alloy processing, and does not currently maintain a ''strategic reserve'' of rare earth compounds, metals, or alloys.

(7) Rare earths should qualify as materials either strategic or critical to national security. The United States Government should facilitate the domestic reintroduction of a globally competitive rare earth industry that is self-sufficient in the United

States domestic market with multiple sources of mining, processing, alloying, and manufacturing.

(8) This self-sufficiency requires an uninterrupted supply of strategic materials critical to national security and innovative commercial product development, including rare earths, to support the clean energy and defense supply chains.

(9) The United States currently cannot reclaim valuable rare earths and permanent magnets from scrapped military or consumer products, industrial materials or equipment, which allows entities in other countries to identify and recover such materials for resale to United States manufacturers at considerable cost.

(10) There is an urgent need to identify the current global market situation regarding rare earths, the strategic value placed on them by foreign nations including China, and the supply-chain vulnerabilities related to rare earths and products containing rare earths.

SEC. 3. ACTIONS TO PROMOTE RARE EARTH DEVELOPMENT.

(a) POLICY.—It is the policy of the United States that each Federal agency shall take appropriate actions, to the extent consistent with applicable law, to expedite

permitting and projects that will increase exploration for, and development of, domestic rare earths.

(b) RARE EARTH POLICY TASK FORCE.—

(1) ESTABLISHMENT.—There is established within the Department of the Interior a task force to be known as the ''Rare Earth Policy Task Force'' (referred to in this section as the ''Task Force''), which shall report to the President through the Secretary of the Interior.

(2) COMPOSITION.—The Task Force shall be composed of the following:

(A) The Secretary of the Interior (or a designee), who shall serve as chair of the Task Force.

(B) The Secretary of Energy (or a designee).

(C) The Secretary of Agriculture (or a designee).

(D) The Secretary of Defense (or a designee).

(E) The Secretary of Commerce (or a designee).

(F) The Secretary of State (or a designee).

(G) The Director of the Office of Management and Budget (or a designee).

(H) The Chairman of the Council on Environmental Quality (or a designee).

(I) Such other members as the Secretary of the Interior considers appropriate.

(c) DUTIES.—The Task Force shall—

(1) monitor and assist Federal agencies in expediting the review and approval of permits or other actions, as necessary, to accelerate the completion of projects that will increase investment in, exploration for, and development of domestic rare earths pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Act of June 4, 1897 (commonly known as the ''Organic Act of 1897'' (16 U.S.C. 473–482, 551), the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.), and any other applicable statutory authorities related to domestic mining operations;

(2) assist Federal agencies in reviewing laws (including regulations) and policies that discourage investment in, exploration for, and development of domestic rare earths pursuant to Federal Land Policy and Management Act of 1976, the Act of June 4, 1897, the National Forest Management Act of 1976, and any other applicable statutory authorities related to domestic mining operations; and

(3) take such other actions to otherwise increase investment in, exploration for, and development of domestic rare earths as the Task Force considers appropriate.

(d) ANNUAL REPORTS.—At least once each year, the Task Force shall submit to the President, the Committee on Natural Resources of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Natural Resources of the House of Representatives a report setting forth the following:

(1) A description of the results of the coordinated and expedited review of permits or other actions to promote investment in, exploration for, and development of domestic rare earths, and an identification of the procedures and actions that have proven to be the most useful and appropriate in coordinating and expediting the review of projects that will increase investment in, exploration for, and development of domestic rare earths.

(2) An identification of the substantive and procedural requirements of Federal, State, tribal, and local laws (including regulations) and Executive orders that are inconsistent with, duplicative of, or structured so as to restrict effective implementation of the projects described in paragraph (1).

(3) Such recommendations as the Task Force considers appropriate to advance the policy set forth in subsection (a).

(e) JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to affect any judicial review of an agency action under any other provision of law.

(2) CONSTRUCTION.—This section—

(A) is intended to improve the internal management of the Federal Government; and

(B) does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States (including an agency, instrumentality, officer, or employee of the United States) or any other person.

SEC. 4. ASSESSMENT OF RARE EARTH SUPPLY CHAIN VULNERABILITY.

(a) ASSESSMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Interior and the Secretary of Energy shall jointly, in consultation with the Secretary of Defense, the Secretary of Commerce, the Secretary of State, and the United States Trade Representative—

(1) undertake an assessment of the domestic rare earth supply chain;

(2) determine pursuant to such assessment which rare earth elements are critical to clean energy technologies and the national and economic security of the United States; and

(3) submit to Congress a report setting forth the results of such assessment and determination.

(b) ESTABLISHMENT OF STOCKPILE.—Not later than one year after the date of the enactment of this Act, the Secretary of the Interior and the Secretary of Energy shall jointly, in consultation with the Secretary of Defense, the Secretary of Commerce, the Secretary of State, and the United States Trade Representative, submit to Congress a report setting forth the following:

(1) An assessment whether or not the rare earth materials determined to be critical to clean energy technologies and the national and economic security of the United States pursuant to subsection (a)(2) should be procured and placed in a stockpile.

(2) An assessment whether or not adequate legal authorities exist to procure and place in a stockpile the rare earth materials so determined to be critical to clean energy technologies and the national and economic security of the United States.

(3) Recommendations on the criteria to be utilized in determining the commencement and termination of the stockpiling of such rare earth materials.

(c) STOCKPILE DEFINED.—In this section, the term ''stockpile'' means a strategic reserve of rare earth oxides, and storable forms of rare earths and alloys for purposes of clean energy technology and the national and economic security of the United States.

SEC. 5. LOAN GUARANTEES FOR THE DOMESTIC RARE EARTH SUPPLY CHAIN.

(a) REPORT TO INDUSTRY.—Not later than 90 days after the date of the enactment of the Act, the Secretary of Energy shall issue a report to industry describing available mechanisms for obtaining government loan guarantees for purposes of reestablishing a domestic rare earth supply chain.

(b) DEPARTMENT OF ENERGY SUPPORT.—Not later than 90 days after the date of the enactment of the Act, the Secretary of Energy shall issue guidance for the rare earth industry on obtaining loan guarantees under title XVII of the Energy Policy Act of 2005 (Public Law 109–58; 22 U.S.C. 16511 et seq.) and the American Recovery and Reinvestment Act of 2009 (Public Law 111–16) for purposes of supporting the reestablishment of mining, sep-

aration, purification, metal processing, refining, alloying, and manufacturing operations in the United States relating to rare earths that will support the domestic clean energy technology and defense supply chains.

SEC. 6. DEFENSE-RELATED PRODUCTION OF RARE EARTHS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States faces a shortage of key rare earth materials that form the backbone of both the defense and energy supply chains; and

(2) the urgent need to reestablish a domestic rare earth supply chain warrants a prioritization of projects under the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.) to support the reestablishment of such a supply chain.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report describing past, current, and future projects under the Defense Production Act of 1950 to support the domestic rare earth supply chain. If no such project is in process or planned as of the date of the report, the report shall include a justification for the lack of projects to support a domestic rare earth supply chain, particularly projects to establish or support do-

mestic manufacturing capability in critical segments of the rare earth market.

SEC. 7. SUPPORT FOR DOMESTIC RARE EARTH SUPPLY CHAIN.

It is the sense of Congress that, in order to reestablish the security of rare earth supplies within the United States, and associated technologies—

(1) there is a pressing need to support innovation, training, and workforce development in the domestic rare earth supply chain;

(2) the Department of Energy, the Department of the Interior, the Department of Commerce, and the Department of Defense should each, utilizing funds available to such department for basic research and development, provide funds to academic institutions, Government laboratories, corporate research and development, not-for-profit research and development, and industry associations in support of innovation, training, and workforce development in the domestic rare earth supply chain; and

(3) in providing funds under paragraph (2), the Department of Energy, the Department of the Interior, the Department of Commerce, and the Department of Defense should give priority to academic institutions, Government laboratories, corporations,

not-for-profit entities, and industry associations that will utilize domestically produced rare earths and associated materials.

SEC. 8. RESTRICTIONS.

(a) LIMITATION ON DIVESTMENT OF FACILITIES CREATED.—No recipient of appropriated funds for the purposes of supporting the reestablishment of a domestic rare earth supply chain, may divest any resources or assets funded, whether in whole or in part, by such appropriated funds to any foreign-owned or controlled entity without the concurrence of the Secretary of Energy, the Secretary of Defense, and the Secretary of Commerce.

(b) ENHANCING NATIONAL SECURITY.—Any recipient of appropriated funds obtained in connection with the reestablishment of a domestic rare earth supply chain shall be subject to the provisions of section 2538 of title 10, United States Code, in the utilization of such funds, including with respect to any rare earth-related material sold by such recipient in the commercial marketplace.

SEC. 9. DEFINITIONS.

In this Act:

(1) ALLOY.—The terms ''alloy'' means a partial or complete solid solution of one or more elements in a metallic matrix.

(2) ALLOYING.—The term ''alloying'' means the melting of metal to create a metallic matrix.

(3) CLEAN ENERGY TECHNOLOGY.—The term ''clean energy technology'' means a technology related to the production, use, transmission, storage, control, or conservation of energy that will—

(A) reduce the need for additional energy supplies by using existing energy supplies with greater efficiency or by transmitting, distributing, or transporting energy with greater effectiveness through the infrastructure of the United States;

(B) diversify the sources of energy supply of the United States to strengthen energy security and to increase supplies with a favorable balance of environmental effects if the entire technology system is considered; or

(C) contribute to a stabilization of atmospheric greenhouse gas concentrations through reduction, avoidance, or sequestration of energy-related emissions.

(4) PROCESS.—The term ''process'', in the case of a rare earth oxide, means the conversion of the oxide into usable rare earth metals and specialty al-

loys and powders for domestic magnet and other manufacturing.

(5) RARE EARTH.—The term ''rare earth''—

(A) means the chemical elements in the periodic table from lanthanum (atomic number 57) up to and including lutetium (atomic number 71); and

(B) includes the chemical elements yttrium and scandium.

(6) REFINE.—The term ''refine'', in the case of a rare earth extracted from rock, means the separation and purification of the rare earth to commercial grades of oxides or other salts such as oxalates or chlorides.

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