



Legislative Bulletin.....September 18, 2013

Contents:

H.R. 761 - National Strategic and Critical Minerals Production Act of 2013

H.R. 761 - National Strategic and Critical Minerals Production Act of 2013 (Amodei, R-NV)

Order of Business: The legislation is scheduled to be considered the week of September 17, 2013, under a rule, H.Res. 347. The rule provides for the consideration of H.R. 761 in the Committee of the Whole House on the state of the Union. The rule waives all points of order against consideration of the bill, and limits debate to one hour. After general debate, the bill will be considered for amendment under the five-minute rule. The rule makes in order the amendments summarized in this document. The rule waives all points of order against amendments offered. After amendment consideration, the Committee shall rise and report the bill to the House. At that time, any Member may demand a separate vote in the House on any amendment that was adopted in the Committee of the Whole. The rule also provides for one motion to recommit with or without instructions. The text of H.Res. 347 can be [viewed here](#).

Summary: H.R. 761 directs that domestic mines that provide strategic and critical minerals shall be considered as an “infrastructure project” as described in President Obama’s Executive Order 13604, titled “Improving Performance of Federal Permitting and Review of Infrastructure Projects.”¹

The legislation directs the lead agency (federal, state, local, tribal, or Alaska Native Corporation) that is responsible for issuing a mining permit to designate a project lead to coordinate with other agencies to ensure that agencies:

- minimize delays;
- set and adhere to timelines and schedulers for completion of review;
- set clear permitting goals; and
- track progress against those goals.

The legislation provides for certain relief from the National Environmental Policy Act if the lead agency has procedural and substantive safeguards built into their permitting process to ensure that environmental safeguards are taken into account.

¹ <http://www.gpo.gov/fdsys/pkg/FR-2012-03-28/pdf/2012-7636.pdf>

The lead agency is directed to enhance government coordination on permitting and review by avoiding duplicative review, minimizing paperwork, and engaging in other agencies and stakeholders early during the process. The lead agency shall consider the following best practices:

- Deferring to and relying upon baseline data, analysis and reviews performed by state agencies with jurisdiction over the proposed project.
- Conducting reviews concurrently rather than sequentially to the extent practicable and when such concurrent review will expedite rather than delay a decision.

The legislation directs the lead agency to, when requested by a project proponent, 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.

The legislation states that in no case should the above review process exceed 30 months unless it is agreed by the signatories of the agreement. H.R. 761 states that the lead agency does not have to address agency or public comments that were not submitted during the public comment periods. While developing the minerals, it shall be the priority of the lead agency to maximize the development of the mineral, while mitigating environmental impacts.

H.R. 761 also sets a 60 day time limit to file a legal challenge to a mineral permit. The legislation also gives the permit holder the right to intervene in certain covered civil actions.

The legislation directs the court to hear and determine any covered civil action as expeditiously as possible. In a covered civil action, the court is prohibited from granting or approving any prospective relief unless the court finds that the relief is narrowly drawn, and that it extends no further than necessary to correct the violation of a legal requirement.

The legislation prohibits the Equal Access to Justice Act from applying to a covered civil action. The legislation also prohibits any party from receiving payment from the federal government for their attorneys' fees, expenses, and other court costs.

Amendments Made In Order:

Lowenthal (D-CA): The amendment strikes the existing definition of “strategic and critical minerals” and replaces it with the following definition:

- “minerals and mineral groups identified as critical by the National Research Council in the report entitled “Minerals, Critical Minerals, and the U.S. Economy”, dated 2008; and
- “additional minerals identified by the Secretary of the Interior based on the National Research Council criteria in such report.”

The amendment states that strategic and critical minerals are not to include sand, gravel, or clay. The amendment also strikes the existing definition of “mineral exploration or mine permit” and replaces it with the following definition:

- “a mineral exploration or mine permit for strategic and critical minerals; and
- “includes any plan of operation for strategic and critical minerals that is issued by the Bureau of Land Management and the Forest Service.”

The text of the amendment can be [viewed here](#).

Connolly (D-VA): The amendment strikes the existing waiver from NEPA, and directs the lead agency to determine any action that would constitute a major federal action significantly affecting the quality of the human environment within the meaning of NEPA. The amendment also strikes the schedule for permitting process that is clarified by the underlying legislation. The text of the amendment can be [viewed here](#).

Hastings (D-FL): The amendment directs the lead agency to determine the cost of cleanup in the event of any release that could occur. This amount is required to be submitted in a security bond or letter of credit. This lead agency will conduct annual inspections and reviews of this financial insurance. The text of the amendment can be [viewed here](#).

Pearce (R-NM): The amendment clarifies that nothing in the action affects any aspect of Secretarial Order 3324, issued by the Secretary of the Interior on December 3, 2012. The text of the amendment can be [viewed here](#).

This order provides procedures and guidelines “for more orderly co-development of oil, gas, and potash deposits owned by the United States within the Designated Potash Area.” The order can be [viewed here](#).

Veasey (D-TX): The amendment directs the Secretary of the Interior to publish in the Federal Register a list of the minerals that are strategic and critical minerals for the purposes of this act. This is to be done within 60 days and updated every 5 years thereafter. The text of the amendment can be [viewed here](#). Section 3(1) currently contains an existing definition of “strategic and critical minerals.” An amendment was offered to this legislation last Congress by Rep. Tonko that also sought to narrow the definition of “strategic and critical minerals.” That amendment was H.Amdt. 1371 to H.R. 4402, and it failed by a [roll call vote of 162-251](#).

Additional Information: The legislation addresses permitting timelines for mineral exploration and development. Permitting timelines are the most significant roadblock to mineral exploration.

In the 2012 Ranking of Countries for Mining Investment², the U.S. tied with Papua New Guinea as last out of major mining countries due to permitting delays.

Similar Legislation: During 112th Congress, the House passed similar legislation on July 12, 2012, by a [roll call vote of 256-160](#). The RSC Legislative Bulletin for H.R. 4402 can be [viewed here](#).

Outside Group Support: The following groups have expressed support for H.R. 761:

- 60 Plus
- Agricultural Retailers Association
- Americans for Limited Government
- American Foundry Society
- Barrick Gold of North America
- California Women for Agriculture
- CTIA-The Wireless Association
- The Fertilizer Institute
- National Association of Home Builders
- National Association of Manufacturers
- National Mining Association
- National Stone, Sand & Gravel Association
- National Tax Limitation Committee
- Northwest Mining Association
- Telecommunications Industry Association (TIA)
- U.S. Chamber of Commerce
- Utah Mining Association
- Women's Mining Coalition

Committee Action: H.R. 761 was introduced on February 15, 2013, and was referred to the House Natural Resources Subcommittee on Energy and Mineral Resources, as well as the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law. The Natural Resources Subcommittee discharged the legislation by unanimous consent. On May 15, 2013, the full committee [held a markup](#) and agreed to the legislation by a [roll call vote of 24-17](#), as amended.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: CBO estimates that implementing H.R. 761 would have no significant budgetary effect. CBO's score can be [found here](#).

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, H.R. 761 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.

² <http://www.dolbear.com/news-resources/documents>

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation does not contain earmarks, limited tax benefits or limited tariff benefits.

Constitutional Authority: Rep. Amodei states “Congress has the power to enact this legislation pursuant to the following: Article IV, Section 3, Clause 2 of the Constitution.” The statement can be [viewed here](#).

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.
